TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 230.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY, HENRY W. CANNON, COMMISSIONER, &c., APPELLANTS,

vs.

ALEXANDER R. SHEPHERD, JOHN W. THOMPSON, ET AL.

FILED MAY 29, 1885.

No. ~~285~~ 256

ALEXANDER R. SHEPHERD, APPELLANT,

vs.

JOHN W. THOMPSON.

FILED JULY 27, 1885.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Subpœna to Answer.*

Original.

In the Supreme Court of the District of Columbia, the 2 day of Aug., 1877.

A. R. SHEPHERD *et al.*, Com.,
against
F. S. & T. Co. *et al.*, Def.
} No. 5723, Eq. Doc. 17.

To the Freedman's Savings and Trust Company, J. A. J. Creswell, Rob't Purvis, Rob't H. T. Leipold, commissioners, etc.; Jno. W. Alvord, George W. Stickney, def.:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the bill this day filed and entitled as above under the pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

2 [SEAL.] R. J. MEIGS, *Clerk*,
R. J. MEIGS, JR., *Ass't Cl'k.*

MEMORANDUM.—That the defendants herewith served are to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Summoned and served notice of injunction on defendants, Freedman's Savings and Trust Co. & commissioners — Geo. W. Stickney. Aug. 4th, 1877.

F. DOUGLASS, *Marshall.*

Mattingly, A. C. Bradley.

3 *Restraining Order.*

The defendant is hereby restrained as prayed in the within-mentioned bill until further order, to be made, if at all, after a hearing, which is fixed for the 4 day of Sept., 1877, of which take notice.

By the court:

A. WYLIE, *Justice.*

Test: R. J. MEIGS,
By R. J. MEIGS, JR., *Ass't Clerk.*

4 *Subpœna to Answer.*

Copy.

In the Supreme Court of the District of Columbia, the 2 day of Aug., 1877.

A. R. SHEPHERD *et al.*, Com., *against* F. S. & T. Co. *et al.*, Def. } No. 5723, Eq. Doc. 17.

The President of the United States to John W. Alvord, defendant:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the bill this day filed and entitled as above under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Carter, chief jus.

[SEAL.]

R. J. MEIGS, *Clerk.*
R. J. MEIGS, *Ass't Clerk.*

5 MEMORANDUM.—That the defendant herewith served is to enter his appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Restraining Order.

The defendant is hereby restrained as prayed in the within-mentioned bill until further order, to be made, if at all, after a hearing, which is fixed for the 4 day of Sept., 1877, of which take notice.

By the court:

A. WYLIE, *Justice.*

Test:

R. J. MEIGS, *Cl'k,*
By R. J. MEIGS, JR., *Ass't Cl'k.*

6 *Filed Aug. 2, '77. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

ALEXANDER R. SHEPHERD, GEORGE TAYLOR, SAMUEL CROSS, and PETER F. BACON *vs.* JOHN A. J. CRESWELL, ROBERT PURVIS, and Robert H. T. Leipold, Commissioners of the Freedmen's Savings and Trust Comp'y; John W. Alvord, and George W. Stickney. } No. 5723, Docket 17.

To the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiffs complain as follows:

1. They and defendants are residents of the District of Columbia.
2. The plaintiff Shepherd sues in his own right, and plaintiffs Tay-

lor, Cross, and Bacon sue as trustees under a certain deed
7 of trust from said Shepherd, bearing date Nov. 15th, 1876, recorded in Liber No. 839, folio 226, of the land records of the District of Columbia, by which the said Shepherd conveyed, among other pieces or parcels of real estate, the piece or parcel hereinafter described, upon certain trusts, as will fully appear upon reference to said deed, which is prayed to be read and considered as part hereof, and to a subsequent instrument dated, and recorded among said land records in Liber 839, folio —, which is prayed to be read and considered as part of this bill.

3. The defendants Creswell, Purvis, and Leipold are sued as commissioners of "The Freedman's Savings and Trust Company," appointed and acting under and by virtue of an act of Congress approved June 20th, 1874, entitiled "An act amending the charter of the 'Freedman's Savings and Trust Company,' and for other purposes;" and defendants Alvord and Stickney are sued as trustees
8 under a certain deed of trust more fully set out in a subsequent paragraph of this bill.

4. On the 16th day of June, 1873, the Freedman's Savings and Trust Company, by deed of that date, conveyed unto one Andrew C. Bradley that certain piece or parcel of land situate in the city of Washington, District of Columbia, known and described as part of lot 4, in square No. 377, as will fully appear upon reference to said deed, duly recorded among the land records of said District in Liber —, folio —, reference to which is made and prayed to be read and considered as part hereof; and at the same time, by a deed of trust bearing date June 9th, 1873, the said Bradley conveyed the same property to defendants Alvord and Stickney in trust to secure the deferred payments of the purchase-money for said property, represented in five promissory notes bearing even date with said deed of trust, payable, respectively, in one, two, three, four, and five years after date, with interest at 8 per centum per annum, payable
9 semi-annually, for the respective sums of $2,400, $2,650, $2,900, $3,150, and $5,900, as will appear upon reference to said deed of trust, duly recorded among said land records in Liber —, folio —, which is prayed to be read and considered as part of this bill; and subsequently, by deed dated August 27th, 1874, the said Bradley conveyed said real estate to plaintiff Shepherd, who assumed the payment of the said promissory notes; said deed is fully recorded in Liber —, folio —, and is prayed to be read and considered as part of this bill.

5. That at the time when the deed to said Bradley was delivered a cash payment of $1,500 was made to "The Freedman's Savings and Trust Company," and the said promissory notes for the deferred payments and the said deed of trust to secure the payment of the same were delivered to it, and since then the first part of said notes, for the sum of $2,400, and three installments of interest which have become due, have been duly paid.

6. Before the maturity of the second of said notes for $2,650, and of the fourth installment of said interest, one Louisa McGhaw
10 and one Edward Clark, her trustee, filed their bill against

this plaintiff, Shepherd, and these defendants, Creswell, Purvis, and Leipold, commissioners of the Freedman's Savings and Trust Company, and others in this court, the cause being known as No. 4260, equity docket 14, in which they set up certain equities affecting the title of "The Freedman's Savings and Trust Company" in and to the said real estate conveyed by it to said Bradley and by him to the plaintiff, Shepherd, and seek the rescission and cancellation of the deed of conveyance of said real estate to said Freedman's Savings and Trust Company, and of the said deeds mentioned in the 4th paragraph of this bill, and of the said promissory notes therein mentioned, and accounting by said Shepherd of the rents of said real estate by him received, and an injunction restraining him from conveying or encumbering said real estate; and said cause has been duly heard and considered by this court in general term and a decree rendered dismissing said bill, from which
11 decree an appeal has been taken to the Supreme Court of the United States, as will appear by the records and proceedings in said cause, which are prayed to be read and considered as part of this bill.

7. They charge that the said Freedman's Savings and Trust Company, under the provisions of the act of Congress approved June 20, 1874, referred to in the 3d paragraph of this bill, and since the date of the deed from it to said Bradley, has been placed in the hands of said Creswell, Purvis and Leipold as commissioners, who have proceeded to close up its entire business and have thus far been able to pay to its creditors only a dividend of twenty per cent., and that said corporation is entirely insolvent.

8. They charge that the said Creswell, Purvis, and Leipold, commissioners, although parties defendant to the said bill in cause No. 4260, equity, referred to in the 6th paragraph of this bill,
12 and although the said cause is still pending, have caused the said real estate to be advertised for sale by said Alvord and Stickney under the said deed of trust, the sale to take place Friday, August 3, 1877, at 6 o'clock p. m., as will appear by a copy of the advertisement hereto annexed, marked Exhibit S. No. 1, which is prayed to be taken and considered as a part of this bill.

9. They charge that the said equity cause 4260 is *lis pendens* and a cloud upon the title purchased by the plaintiff Shepherd and held by said trustees, Alvord and Stickney; and that inasmuch as said corporation is insolvent, it would be unsafe for said Shepherd to pay to it anything further on account of said purchase-money until the final disposition of said cause, and it will be impossible for the said trustees to obtain a purchaser or bidder at such proposed sale except the said commissioners.

10. They charge that the cash payment required of the pur-
13 chaser by the terms of sale advertised would be very prejudicial to their interests, and is unwarranted by the deed of trust.

Inasmuch, therefore, as they have no resource for relief save to your hon. court, they pray as follows:

1. That the defendants, their agents and servants, may be re-

strained by order and injunction of this court from selling under said advertisement the said real estate, and from further advertising the same for sale under said deed of trust until the final determination of said cause in the Supreme Court of the United States.

2. That the plaintiffs may have such other and further relief in the premises as the nature of the case may require.

To which end they pray for process against John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, John W. Alvord, and George W. Stickney.

14 The defendants to this bill of complaint are John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, John W. Alvord, George W. Stickney.

ALEX. R. SHEPHERD.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol'rs for Pl'ffs.

I do solemnly swear that I have read the bill by me subscribed and know the contents thereof, and that the facts therein stated upon my own knowledge are true, and those stated upon information and belief I believe to be true.

ALEX. R. SHEPHERD.

Subscribed and sworn to before me this second day of August, 1877.

D. R. BELL,
Notary Public.

[Endorsed:] 5723, eq. doc. 17. Shepherd *et al. v.* F. S. & T. Co. Copy. Bill. Original filed Aug. 3, '77. For service on def't.

14½ On filing this bill it is ordered, this 2d day of August, 1877, that the application for injunction be heard on Tuesday, the 4th day of September next, before the court in special term, or as soon thereafter as the same can be heard by the court, and in the meantime that the defendant be restrained as prayed.

A. WYLIE.

Filed Oct. 25, 1877. *R. J. Meigs.*

15 In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD, GEORGE TAYLOR, SAMUEL CROSS, and PETER F. BACON *vs.* JOHN A. J. CRESWELL, ROB'T PURVIS, and ROB'T H. T. Leipold, Commissioners of the Freedman's Savings and Trust Company, *et al.*	Equity No. 5723.

The answer of John A. J. Creswell, Robert Purvis, and Rob't H. T. Leipold to the bill of complaint of the above-named complainants respectfully shows as follows, to wit:

First. They admit that all of the parties are residents of the District of Columbia.

Second. They have no personal knowledge of the allega-
16 tions contained in the second paragraph of the said bill, but they have no reason to doubt the truth thereof.

Third. They admit the allegations contained in the third paragraph of the said bill.

Fourth. They admit the allegations contained in the fourth paragraph of the said bill.

Fifth. They admit the allegations contained in the fifth paragraph of said bill.

Sixth. They admit the allegations contained in the sixth paragraph of said bill.

Seventh. They admit the allegations contained in the seventh paragraph of the said bill; and, further answering the allegations in the seventh paragraph of said bill, they say they are informed and believe, and therefore charge, that the said Alexander R. Shepherd is also insolvent as well as the Freedman's Savings and Trust Company.

17 Eighth. They admit the allegations contained in the eighth paragraph of the said bill.

Ninth. In answer to the allegations contained in the ninth paragraph of the said bill they say that they are advised and believe that it is immaterial whether a clould be upon the title or not so far as the matters and things set forth and charged in the said bill are concerned, and as to whether or not it will be impossible to obtain a purchaser for the said property they say that they are unable to state whether or not a purchaser could be found other than the commissioners of the Freedman's Savings and Trust Company.

Tenth. In answer to the allegations contained in the tenth paragraph of the said bill they deny that the terms of sale men-
18 tioned in the said advertisement are unwarranted by the deed of trust. They are informed and believe that the terms of sale mentioned in the said advertisement are those prescribed in the said deed of trust; and, having fully answered, they pray to be hence dismissed with their reasonable costs and charges.

JOHN A. J. CRESWELL,
ROB'T PURVIS,
ROB'T H. T. LEIPOLD,
Com'rs of the F. S. & T. Co.

ENOCH TOTTEN &
R. H. T. LEIPOLD,
For Com'rs F. S. & T. Co.

DISTRICT OF COLUMBIA, *County of Washington:*

SIRS: I, Robert H. T. Leipold, being first duly sworn, do depose and say that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon
19 personal knowledge I know to be true, and that the facts therein stated upon information and belief I believe to be true.

ROBERT H. T. LEIPOLD.

Subscribed and sworn to before me this 19th day of Oct., A. D. 1877.

[Seal D. Rittenhouse, Notary Public, District of Columbia.]

D. RITTENHOUSE,
Not'y Public.

20 *Filed Oct. 25th*, 1887.

Sup. Court of the District of Columbia.

A. R. SHEPHERD *et al.*
vs.
JOHN A. J. CRESWELL *et al.*, Com'r- of the F. S. & T. Co. *et al.* } Eq. No. 5732.

On motion of the solicitor of the com'r- of the F. S. & T. Co., defendant- in the above cause, it is this 25th day of Oct., 1877, ordered that the said defendants have, and they are hereby granted, leave to file a cross-bill in this cause.

By the court:

MACARTHUR.

21 *Cross-Bill. Filed Oct. 25th*, 1887. *R. J. Meigs.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
vs.
JOHN A. J. CRESWELL *et al.*, Commissioners of the Freedman's Saving and Trust Company *et al.* } Eq. No. 5723.

John A. J. Creswell, Rob't Purvis, and Rob't H. T. Leipold, commissioners of the Freedman's Saving and Trust Company, by this their cross-bill filed by leave of the court first had and obtained, respectfully show as follows:

First. They are commissioners of the Freedman's Saving and Trust Company duly appointed and qualified under and in
22 pursuance of the provisions of an act of Congress approved June 20, 1874, for that purpose; and that ever since the 11 day of July, 1874, they have been in custody and charge of the assets of the said corporation and have been endeavoring to collect all the debts due to the said corporation and to pay as much money as they could secure to the creditors of said corporation; that they are still engaged in that occupation.

Second. That on or about the 16th day of June, 1873, the Freedman's Savings and Trust Company, duly organized by virtue of an act of Congress and being the owner and holder of the premises mentioned in the bill of complaint, to wit, the piece or parcel of land described as part of lot 4, in square No. 377, and mentioned in the fourth paragraph of the original bill in this cause,
23 duly sold and conveyed the said property to one Andrew C. Bradley for a valuable consideration; that to secure the de-

ferred payments due or to become due for the said property the said Bradley and wife, about the same time, executed and delivered to George W. Stickney and John W. Alvord, defendants hereto, a deed of trust; that the amount of said deferred payments was about the sum of $17,000.00, which was payable in sums of $2,400.00, $2,500.00, $2,900.00, $3,150.00, and $5,900.00, as will appear on reference to the said deed of trust; they are informed and believe and therefore charge that the sale, although nominally made to Andrew C. Bradley, was, in fact, made to the complainant, Alexander R. Shepherd, and for his sole and separate benefit, the said Bradley
24 acting merely for and on behalf of the said Shepherd; afterwards and on or about the 11 day of September, 1874, by a deed, dated August 27, 1874, the said Bradley and wife, by a conveyance good and sufficient in the law, conveyed the said property to the said Alexander R. Shepherd, and that by a bargain between the said Shepherd and the said Andrew C. Bradley said Shepherd assumed the payment of all of the said deferred payments.

Third. Soon after the conveyance to the said Andrew C. Bradley a lease was consummated between the United States of America, acting through John A. J. Creswell, Postmaster General of the United States, and the said Bradley, by which the said premises were leased to the Post Office Department for a term of three years, at a rental of $4,200.00 per year, which lease was renewable for two years at the same price. About the time of the consummation of the said
25 lease said property was turned over to the possession of the United States, and has been from that date up to the present time occupied by the United States for the use of the Post Office Department.

Fourth. The rents stipulated for in and by the said lease from the said Andrew C. Bradley were regularly paid up to and to include the 30th day of June, 1875, since which time the Government of the United States has refused to pay the rent stipulated in and by said lease. No rents have been paid, as your complainants are informed and believe, by the Government of the United States on account of the said lease since the 30th day of June, 1875, and the whole amount of the rental of said property is now due upon said lease.

Fifth. On or about the fifth day of December, 1876, the said
26 Andrew C. Bradley exhibited his petition in the United States Court of Claims, whereby he claimed to recover from the United States, on account of the rental value of the said property, the sum of $4,200.00 for the benefit of the assignees of the said Alexander R. Shepherd, to wit, George Taylor, Henry A. Willard, and Samuel Cross. The said suit is still pending and undecided in the United States Court of Claims. They further aver, upon information and belief, that by virtue of power contained in the deed of assignment by said Shepherd Peter F. Bacon has been substituted as assignee or trustee in place of Henry A. Willard.

Sixth. These commissioners are informed and believe and therefore charge that the said Alexander R. Shepherd is insolvent, and that by virtue of the deed referred to in the second paragraph
27 of the original bill in this cause he made an assignment for

the benefit of his creditors, and that all of his property is now held by said trustees for the use and benefit of the creditors of the said Alexander R. Shepherd; they are also informed and believe and therefore charge that said Bradley is insolvent.

Seventh. These commissioners are trustees in charge of the funds and assets appertaining to the Freedman's Saving and Trust Company; that the said corporation is insolvent, and that they were appointed under and by virtue of the act of Congress hereinbefore mentioned for the purpose of paying to the creditors of the said institution as much as could be realized out of the assets thereof. Of the deferred notes given by the said Andrew C. Bradley in payment for the said property only one, to wit, the first one, for the sum of
$2,400.00, has been paid, and that all the other deferred notes
28 are wholly unpaid and the interest due thereon remains unpaid; and these commissioners are fearful that in consequence of the depreciation in the value of real estate in the city of Washington the said property would not sell for sufficient to pay the deferred payments now unpaid together with the interest thereon and the taxes which have accumulated, amounting to about $1,576.00, and they fear that if the trustees or assignees of the said Alexander R. Shepherd shall be permitted to collect the amount of money due from the United States for the rent of the said property the interest of the creditors of the Freedman's Savings and Trust Company will be irreparably injured; and they think that, inasmuch as the said Andrew C. Bradley and the said Alexander R. Shepherd wholly refuse to pay either the interest or the principle due on account
29 of the deferred payments for the said property, they are entitled to have the rents, issues, and profits of the said property applied to the payment of the said debt, and that it would be unjust that the proceeds arising from the said property should be applied to the liquidation of the debts of the said Alexander R. Shepherd to his other creditors, and they therefore pray—

1. That the writ of subpœna may be issued to the said several complainants mentioned in the original bill and that they be compelled to answer this cross-bill.

2. That the said Alexander R. Shepherd and the said George Taylor, Samuel Cross, and Peter F. Bacon be perpetually restrained from applying for or receiving, either directly or indirectly, any rents or sums of money due from the United States on account of the said lease or for the use and occupation of the said premises until
30 the final determination of this cause and of equity suit No. 4260 in the supreme court of the District of Columbia, and mentioned and described in the sixth paragraph of the said bill.

3. That a receiver may be appointed, clothed with power to collect the rents which may be due from the United States on account of the use and occupation of the said premises at such time and in such manner as the court may direct, and that said receiver may be directed to apply to the Court of Claims for leave to prosecute the said suit against the United States to recover the amount due for the use and occupation of the said premises.

4. For such other and general relief as may be agreeable to equity and good conscience and as the nature of their case may require.

JOHN A. J. CRESWELL,
ROB'T PURVIS,
31 R. H. T. LEIPOLD,
Comm. F. S. & T. Co.

ENOCH TOTTEN AND
R. H. T. LEIPOLD,
Sol'r- for Com'r- F. S. & T. Co.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss*:

I, Robert H. T. Leipold, being first duly sworn, do depose and on my oath say that I have read the foregoing cross-bill by me subscribed and know the contents thereof; that the facts therein stated upon personal knowledge I know to be true, and that the facts therein stated upon information and belief I believe to be true.

ROB'T H. T. LEIPOLD.

Subscribed and sworn to before me this nineteenth day of October, A. D. 1877.

[SEAL.] D. RITTENHOUSE,
Notary Public.

32 *Injunction Restraining Collection of Rents. Filed Mar.* 18, 1878.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.* }
v. } Equity No. 5723.
F. S. & T. Co. *et al.* }

This cause having come on to be heard on the motion of the commission-s of the Freedman's Savings and Trust Company for a receiver and an injunction as prayed in the cross-bill, it is, upon motion of Enoch Totten, solicitor for the said commissioners of the Freedman's Savings and Trust Company, this 18th day of March, 1878, ordered that the complainants in this cause be, and
33 they hereby are, enjoined and restrained, and each of them, his agents, attorneys, and representatives are restrained, from collecting or receiving any moneys or other thing of value from the United States on account of the lease made between the United States and A. C. Bradley, and bearing date on the 6th day of June, in the year one thousand eight hundred and seventy-three, for the premises involved in this cause; and they are so restrained until the further order of this court.

March 18th, 1878.

By the court:

MACARTHUR, *Justice.*

34 *Injunction Restraining Collection of Rents. Filed April* 20, 1878. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.* } *vs.* } Eq. No. 5723.
F. S. AND T. CO. *et al.* }

This cause having come on to be heard on the motion of the commissioners of the Freedman's Saving- and Trust Company for a receiver and an injunction as aforesaid in the cross-bill, it is, upon motion of Enoch Totten, solicitor for the said commissioners of the Freedman's Saving- and Trust Company, this 18th day of March, 1878, ordered that the complainants in this cause be, and they hereby
35 are, enjoined and restrained, and each of them, his agents, attorneys, and representatives, are restrained, from collecting or receiving any moneys or other thing of value from the United States on account of the lease made between the United States and A. C. Bradley, and bearing date on the 6th day of June, in the year one thousand eight hundred and seventy-three, for the premises involved in this cause, and they are so restrained until the further order of this court.

By the court:

MACARTHUR, *Justice.*

36 *Notice of Petition Filed and Intended Motion Relating Thereto. Filed Feb.* 21, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.* } *vs.* } Eq. No. 5723.
F. S. & T. CO. *et al.* }

Please take notice that I have this day filed a petition in the above-entitled cause in behalf of the commissioners of the Freedman's Savings and Trust Company praying the court to proceed against the complainant, A. R. Shepherd, as for a contempt in receiving and appropriating the rental of the property on E street, in the city of Washington, mentioned and described in the proceedings in this cause.

I shall call up this motion on Saturday, the 1st day of
37 March, 1879, at the opening of court on that day, or as soon thereafter as counsel can be heard.

Feb. 21, 1879.

ENOCH TOTTEN,
Sol'r for Def'ts.

To A. C. Bradley, Esquire, sol. for compl'ts.

38 *Petition of Com'rs of F. S. & T. Co. Asking that Complainant Shepherd be Compelled to Pay into Court Certain Rents by Him Collected in Violation of Order March* 18, '78. *Filed Feb.* 21, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.*
v.
F. S. & T. Co. *et al.*
} Eq. No. 5723.

The petition of John A. J. Creswell, Robert Purvis, and Robert H T. Leipold, commissioners of the Freedman's Savings and Trust Company, respectfully shows to the court as follows, to wit:

Since the order in this cause restraining the complainants herein from collecting the rents of the property involved in this case was passed, to wit, on the 18th day of March, 1878, the said
39 property has been occupied by the United States, in pursuance of the lease mentioned in these proceedings, and these petitioners are informed and believe that, notwithstanding the said order restraining the complainants as aforesaid, the said complainant, Alexander R. Shepherd, has ever since the 6th day of June, 1878, applied to the Post Office Department and has actually received and appropriated to his own use all the rents accruing on account of the use and occupation of the said property from the United States, and that he has so collected the rents since the said 6th day of June up to the 31st day of Jan., 1879. They are furtheri nformed and believe and charge that he has so collected rents from the United States from the 6th to the 30th of June, 1878, at the rate of $1,800.00 per annum for the said property, and from the 1st day of July, 1878, to
40 the 31st day of January, 1879, he has so collected the rents at the rate of $1,500.00 per annum.

Your petitioners are advised and believe that the said Alexander R. Shepherd was prohibited and strictly enjoined by virtue of the said order of March 18, 1878, from collecting any of the rents accruing for the use and occupation of the said property, and that he has been guilty of violation of the said injunctional order; and your petitioners are informed and believe and therefore charge that the said injunction or restraining order was made in open court in the presence of the counsel for the complainants, Mr. A. C. Bradley, and by and with his consent, given in open court, and that the said complainant, Alexander R. Shepherd, had otherwise due notice of the making of the said restraining order.

Your petitioners, as in duty bound, therefore pray that the
41 proper proceedings may be had against the said complainant, and that he may be compelled to pay into court the amount of money so by him collected, and that he may be otherwise proceeded with according to the law.

Your petitioners also pray that they may have such other and further relief in the premises as may be necessary and proper for

the protection of the interests of the creditors of the Freedman's Savings and Trust Company by them represented.

JNO. A. J. CRESWELL,
ROB'T PURVIS,
ROB'T H. T. LEIPOLD,
Commissioners F. S. & T. Co.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss*:

Rob't H. T. Leipold, being first duly sworn, doth depose and on his oath say that he is one of the commissioners of the Freedman's Saving- and Trust Company, and that he has read the fore-
42 going petition by the said commissioners signed; that he knows the contents thereof, and the facts therein stated positively he knows to be true and the facts stated therein upon information and belief he believes to be true.

ROBERT H. T. LEIPOLD.

Subscribed and sworn to before me this 18th day of Feb., 1879.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY,
Ass't Clerk.

43 *Order Denying Prayers of Petition Filed Feb.* 21, 1879, *etc. Filed March* 8, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *et al.*
vs.
COMMISSIONERS OF F. S. & T. CO. *et al.* } Eq. No. 5723.

This cause coming on to be heard upon the petition of the commissioners of the Freedman's Savings and Trust Company praying that complainant Shepherd be ordered to pay into court certain moneys by him collected, &c., filed in this cause February 21, 1879, and the same having been argued and considered, and it appearing to the satisfaction of the court that there has been no violation of the terms of said injunction order by said Shepherd, it is by the court, this 8th day of March, 1879, ordered that the prayers
44 of said petition be, and the same hereby are, denied, but without prejudice to said petitioners renewing their application in respect of any rent of said property hereafter coming due.

By the court:

MACARTHUR, *Justice.*

45 *Petition of Com'rs F. S. & T. Co. for Receiver, etc. Filed March 12, 1879. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.* } Equity No. 5723.
v.
F. S. & T. Co. *et al.* }

The petition of John A. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, respectfully shows to the court as follows:

They are advised by counsel and believe that they are entitled to an order appointing a receiver in the above-entitled cause for the purpose of preserving the rents, issues, and profits of the property described therein, and beg leave to refer to the original bill, the answer thereto, and the cross-bill, and their petition filed in this cause on the 21st day of Feb., 1879.

46 1. They therefore pray that a receiver may be appointed to take charge of the said property and to collect the rents therefrom from the United States as long as the United States may continue to occupy the premises, and that the proper orders to that end may be made.

2. That an injunction may be issued restraining the said Shepherd and the other complainants and defendants mentioned in the said cause from applying to or receiving from the United States any money or other valuable thing in consideration of the use and occupation of the said premises.

3. That said receiver may be authorized to take charge of the said property and collect the rents, issues, and profits thereof in the event of the United States abandoning possession thereof.

4. That your petitioners may have such other relief in the
47 premises as may be equitable and just.

JOHN A. J. CRESWELL,
ROBERT PURVIS,
R. H. T. LEIPOLD,
Commissioners F. S. & T. Co.

Subscribed and sworn to before me this 11 day of March, A. D. 1879, by R. H. T. Leipold.

[SEAL.] D. RITTENHOUSE,
Notary Public.

48 *Notice of Motion for Appointment of Receiver. Filed March* 12, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.* }
v. } Equity No. 5723.
F. S. & T. Co. *et al.* }

To A. C. Bradley, Esquire, sol. for compl't Shepherd:

You will please take notice that on Saturday, the 15th day of March, 1879, at the opening of court on that day or as soon thereafter as counsel can be heard, I shall move the court for an order appointing a receiver to take charge of the premises described in the proceedings in the above-entitled cause and to collect the rents, issues, and profits thereof, as prayed for by the commissioners
49 of the Freedman's Saving and Trust Company in their petition this day filed.

Washington, D. C., March 12, 1879.

ENOCH TOTTEN,
Sol. for Commissioners of the F. S. & T. Co.

Service of above notice acknowledged this 12th day of March, A. D. 1879.

A. C. BRADLEY,
Per W. P. BELL.

50 *Motion for Injunction and Appointment of Receiver. Filed May* 2, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.* }
v. } Equity No. 5723.
F. S. & T. Co. *et al.* }

Enoch Totten for com'rs F. S. & T. Co.

And now come the commissioners of the Freedmans' Savings' and Trust Company, by their attorney, and move the court for an order enjoining and restraining each and every one of the parties to this cause, and particularly the complainant, Alexander R. Shepherd, from applying for and receiving any moneys now due or hereafter to become due for the use and occupation of the premises mentioned and described in the proceedings in this cause, whether such
51 moneys have accrued on account of the said lease or otherwise, and for the appointment of a receiver to take charge of the said property and to collect the rents, issues, and profits thereof.

ENOCH TOTTEN,
For Commissioners of F. S. & T. Co.

52 *Order Appointing Receiver to Collect Rents, &c., and Restraining Parties Compl't and Defendant from Collecting the Same, Etc. Filed May* 10, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *et al.*
vs.
F. S. & T. Co., JNO. A. J. CRESWELL, *et al.* } Eq. No. 5723.

This cause having come on to be heard on the application of the commissioners of the Freedman's Savings and Trust Company for an injunction and for the appointing of a receiver to take charge of the property and to collect the rents and profits due and to become due from the United States for the use and occupation of the premises mentioned in the proceedings in this cause, it is,
53 on motion of Enoch Totten, solicitor for the Freedman's Savings and Trust Company and the commissioners thereof, and by consent of counsel for the other parties in the said cause, this 10th day of May, 1879, ordered, adjudged, and decreed that Andrew C. Bradley be, and he hereby is, appointed receiver in this cause, and he is hereby directed to take charge of said property and to apply to the Post Office Department of the United States for and collect and receive the rents now due and hereafter to become due, whether included in judgments of the Court of Claims or special appropriations by Congress or in drafts issued by the Treasury Department of the United States and whether in the hands of any of the parties to this cause or not, for the use and occupation of the premises mentioned and described in the said proceedings
54 which are commonly known as "house No. 915" on E St., between Ninth and Tenth streets northwest, in the city of Washington, excepting, however, the rents accrued and to accrue from the 6th day of June, 1878, to the 1st day of July, 1879, which have been or are to be collected and received by the said Alexander R. Shepherd or his assigns.

It is further ordered that the said receiver shall, before entering upon the discharge of his duties, file with the clerk of this court a bond in the usual form in the penal sum of ten thousand (10,000) dollars, conditioned for the faithful performance of his duty as such receiver in this cause and to perform such orders as may be passed in this cause, said bond to be with surety to be approved by the court or one of the judges thereof.

It is further ordered that each and all of the parties to this
55 cause be, and each of them, their respective agents and attorneys, are hereby, enjoined and restrained from applying for or receiving any moneys due or to become due on account of the use and occupation of the said premises, save and except the rents for the said period from the 6th day of June, 1877, to the 1st day of July, 1879.

It is further ordered, adjudged, and decreed that the said receiver

shall, from time to time, report his doings to this court for further order and direction in the premises.

By the court:

MACARTHUR.

We consent to the above decree.

WM. F. MATTINGLY,
Sol'r for A. R. Shepherd.
ENOCH TOTTEN,
Sol'r for F. S. and T. Co. & its Commissioners.

56 *Order Making Nathaniel Wilson Party Defendant. Filed May 24, 1879. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.*
vs.
CRESWELL *et al.*
} Eq. No. 5723.

This cause coming on to be heard on the petition of Andrew C. Bradley, and having been considered by the court, it is thereupon, this 24th day of May, 1879, ordered that Nathaniel Wilson be, and he is hereby, made party defendant in the above-entitled cause.

By the court:

MACARTHUR, *Justice.*

57 *The Answer of Nathaniel Wilson, Made a Party to this Suit by Order of the Court Passed Herein on the 24th Day of May, 1879. Filed June 25, 1879. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
CRESWELL *et al.*
} Equity No. 5723.

To the honorable the justice of the supreme court of the District of Columbia holding a special term in equity:

In answer to the petition of Andrew C. Bradley, receiver in said cause, I say as follows:

1. I admit that said Andrew C. Bradley was, on the 10th day of May, 1879, appointed receiver in the above-entitled cause for
58 the purpose of collecting certain rents, issues, and profits on account of the premises mentioned in the proceedings in said cause. The application for the appointment of a receiver was made and said decree was entered without any notice having been given to me and without my consent.

2. I admit that, as attorney for the complainant in said cause, Alexander R. Shepherd, I now have in my possession the moneys, hereinafter more particularly referred to, paid to me by the United

States in respect of the rents which have accrued in respect of the property described in said proceedings, and that I have refused to pay over the same to the said Andrew C. Bradley, and I deny that the said Andrew C. Bradley is entitled to receive the same or any part thereof.

3. Some time in the year 1876 I was employed by the said Alexander R. Shepherd to institute and prosecute a suit in the
59 Court of Claims for the recovery of the rents alleged to be due from the United States under a certain lease dated the 6th day of June, 1873, by the terms of which, it was alleged, the United States was bound to pay the sum of $4,200 per annum for the premises described in the bill of complaint in this case for the years ending June 30th, 1876, June 30th, 1877, and June 30th, 1878; said lease was in the name of the said Andrew C. Bradley, but was subsequently assigned to the said Alexander R. Shepherd, and by said Shepherd included in his assignment to trustees; said suit was in the name of Andrew C. Bradley, to the use of Alexander R. Shepherd, to the use of George Taylor and others, trustees, and was prosecuted in the Court of Claims, where a judgment was rendered for the claimants in the sum of $1,800.

From this judgment an appeal was taken to the Supreme Court of the United States on behalf of claimants, and the decree of
60 the Court of Claims was, by the Supreme Court of the United States, affirmed. A copy of the record of said case in the Supreme Court of the United States is filed herewith and marked N. W. Exhibit No. 1.

While said suit was pending in the Supreme Court of the United States another petition was filed in the Court of Claims for the recovery of the moneys alleged to be due for the years ending June 30th, 1877, and June 30th, 1878.

While said suit was pending—that is to say, on the 21st day of June, 1877—the said Andrew C. Bradley and Alexander R. Shepherd executed and delivered to one John W. Thompson a certain paper writing, whereby they both agreed that the demand and claim of the said Andrew C. Bradley to the use of Alexander R. Shepherd and others against the United States for the use and occupation of the premises 915 E street northwest and all the proceeds
61 thereof and the moneys derived therefrom were pledged and made applicable to the payment of the indebtedness of the said Alexander R. Shepherd to John W. Thompson, secured by deed of trust to William Thompson; and, further, that any draft or check issued in payment or part payment of said claim should be endorsed and delivered to the trustee herein referred to, and the proceeds thereof, less all proper costs and charges, be applied to the payment of the indebtedness secured by the deed of trust therein referred to, as will more fully appear by an inspection of said paper writing, a true copy of which is filed herewith and marked N. W. Exhibit No. 2.

After said judgment of the Court of Claims was affirmed by the Supreme Court of the United States a Treasury draft for the sum of $1,800, payable to Andrew C. Bradley, to the use of Alexander R.

Shepherd, to the use of George Taylor, Samuel Cross, and
62 Peter F. Bacon, trustees, was duly issued and transmitted to me, and thereupon, on or about the 3rd day of May, 1879, the said Andrew C. Bradley and the said Alexander R. Shepherd and the said trustees endorsed said draft and delivered the same to me, in order that I might collect the amount thereof and apply the same to the indebtedness due the said John W. Thompson referred to in said paper writing.

On endorsing said draft the said Shepherd required that a commission of 2½ per cent. on the amount thereof should be paid to the said Andrew C. Bradley, and that the said John W. Thompson should release two lots or parts of lots covered by the deed of trust already referred to. I, at that time, informed him that the said John W. Thompson would no doubt agree to release said lots in consideration of receiving the money which was to be paid him under said agreement.

63 Out of the proceeds of said draft I was directed to pay the costs and charges incident to the prosecution of said suit in the Court of Claims and the Supreme Court of the United States, and to pay Andrew C. Bradley 2½ per cent. and to pay the balance to the said John W. Thompson. There was at that time no question or doubt suggested as to the purpose or willingness of the said Andrew C. Bradley to pay to the said John W. Thompson all the rents received and to be received from the United States in respect of the years already mentioned.

In his testimony before a special auditor in a case relating to said indebtedness to the said John W. Thompson, Mr. Shepherd, on the day of April 25, '79, testified as follows:

"I assigned certain rents of house 915 E street to Mr. Thompson, which assignment was concurred in by my trustees and which will aggregate about $5,400. A restraining order issued from the
64 equity court restraining the payment of any past due rents, which order has not yet been rescinded. There is little doubt but that Mr. Thompson will receive this sum, as this assignment was made before this order was issued. A true extract from said testimony is filed herewith and marked N. W. Exhibit No. 3.

After said draft for the sum of $1,800 was issued as aforesaid, and without any suspicion that the said Shepherd proposed in any way to question or repudiate the said agreement of June 21st, 1877, or to object to the payment of the rent for years aforesaid to the said number, I presented to the proper officers of the Government to carry out what I understood to be the intention of the said Shepherd, the account for moneys due for the said years 1877 and 1878, and on the 26th day of May, 1879, received in due course of mail a draft, No. 7336, on Treasury warrant No. 1361, in favor of
65 Andrew C. Bradley, to the use of Alexander R. Shepherd, to the use of George Taylor, Samuel Cross, and Peter F. Bacon, trustees, for $3,475, which I still retain in my possession.

In collecting said money and said draft I acted as the attorney of said Shepherd and not as the attorney or on behalf of said Thompson, and consented to receive said money and pay said Thompson

at the request of said Shepherd and without any personal interest whatever in the disposition thereof, and I should, without hesitation, have paid the proceeds of said draft to said Thompson if it had not been for the restraining order passed on the 20th of April, 1878, a copy of which on the day mentioned had been served upon me.

4th. The said case was prepared and presented in the Court of Claims and Supreme Court of the United States without any agreement having been made as to the compensation I was to re-
66 ceive or as to the payment of the expenses, but as I was assured of the return to me of the costs I paid out of my own pocket the expenses of taking and printing the testimony, printing the arguments and printing the record in the Supreme Court, and the costs of the clerk of the Court of Claims and Supreme Court of the United States, all of which amounted, as nearly as I can state, to the sum of $250. I am also entitled to a fair compensation for my services in the matter, and this compensation I fix at $250, which is a very moderate sum in view of the time and labor expended in the preparation and trial of the case.

Out of the proceeds of said draft on the 9th day of May I paid Andrew C. Bradley, by check on the National Metropolitan Bank, the sum of $45. The remainder of said sum of $1,800, to wit, the sum of $1,255, and the said draft for the sum of $3,475 I hold subject to to the further order and direction of the court.

NATHANIEL WILSON.

67 Nathaniel Wilson, being first duly sworn, deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof, and that the facts therein stated of his own knowledge are true, and those stated on information derived from others he believes to be true.

Subscribed and sworn to before me this 13 day of June, 1879.

[SEAL.] BARTRAM ZEVELY,
U. S. Com's'r, Dist. of Co.

68 N. W. EXHIBIT No. 2.

Assignment. Filed June 25, 1879. *R. J. Meigs, Clerk.*

5723, Eq. Doc. 17.

In consideration of the indebtedness described in the deed of trust to William Thompson, trustee, executed March 10, 1873, and recorded in Liber No. 712, folio 128, of the land records of the District of Columbia, the demand and claim of A. C. Bradley to the use of A. R. Shepherd and others against the United States for the use and occupation of the premises No. 915 E St. northwest, and all the proceeds thereof and the moneys derived therefrom are hereby pledged and made applicable to the payment of said indebtedness,
69 with interest thereon at the rate of 8 per cent. per annum until paid; and it is hereby covenanted and agreed that any

draft or check issued in payment or part payment of said claim shall be endorsed and delivered to the trustee named in said trust, and the proceeds thereof, less all proper costs and charges, be applied to the payment of the said indebtedness, with interest as aforesaid, or to so much thereof as the sum or sums of money so received is or are sufficient to pay.

Witness our hands this 21st day of June, 1877.

(Signed) A. C. BRADLEY.
ALEX. R. SHEPHERD.

The undersigned trustees hereby consent and concur in the above assignment.

GEO. TAYLOR, *Trustee.*
SAMUEL CROSS, *Trustee.*
PETER F. BACON, *Trustee.*

70 N. W. EXHIBIT No. 3. Filed June 25, 1879. R. J. Meigs, Clerk.

Equity, 5723, Doc. 17.

Q. Have you ever assigned or made over to Mr. Thompson anything in satisfaction of this claim?

A. I assigned certain rents of house 915 E street to Mr. Thompson, which assignment was concurred in by my trustees, and which will aggregate about $5,400. A restraining order issued from the equity court restraining the payment of any past-due rents, which order has not yet been rescinded. There is little doubt but that Mr. Thompson will receive this sum, as this assignment was made before the order was issued.

April 25, 1879.

71 *Petition of John W. Thompson Praying Leave to Intervene for His Interests and for Payment of Money to Him. Filed June 25th*, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the — Day of June, A. D. 1879.

A. R. SHEPHERD *et al.*, Comp., *vs.* CRESWELL *et al.*, Def. } Eq. No. 5723.

John W. Thompson, the beneficiary mentioned in the answer filed in the above-entitled cause by Nathaniel Wilson to the petition of Andrew C. Bradley, receiver, comes and moves the court to be allowed to intervene in said cause for his own interest, and as grounds for his motion and petition he respectfully shows—

72 1st. That said Nathaniel Wilson was improperly made a party to said cause, and the proceedings of said Andrew C. Bradley, receiver, in the premises are irregular, null, and void.

2nd. That by the making of said Wilson a party to said cause the interests of this petitioner are unduly and improperly jeopardized.

3rd. That said receiver has no right to demand and receive the funds in the hands of said Wilson, forasmuch as the same are justly and properly payable to this petitioner, in accordance with the statement of facts set forth in said Wilson's answer.

The petitioner therefore prays that the petition of said Bradley, receiver, be dismissed; that the order of the court making said Wilson a party defendant be rescinded, and that said Wilson be directed to pay over to this petitioner the funds in his hands, as set forth in his (said Wilson's) answer.

73 And this petitioner further says that he adopts the answer of said Wilson and says that the facts therein stated, so far as he is acquainted with them, are true.

J. W. THOMPSON.

MERRICK & MORRIS,
Sol's for Petitioner.

I do solemnly swear that I have read the foregoing petition signed by me and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

J. W. THOMPSON.

Subscribed and sworn to before me this 24th day of June, A. D. 1879.

[SEAL.] WM. G. MOORE,
Notary Public.

74 *Answer of Andrew C. Bradley, Receiver, to Petition of John W. Thompson. Filed June* 28, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.* } Eq. No. 5723.

1. In answer to the first paragraph of said petition he says that the said Nathaniel Wilson is a necessary party to this cause, inasmuch as he had in his possession at the time he was made a party, and still has, rent money of the premises described in the proceedings in this cause and now has in his possession a draft issued by the Treasury Department for moneys due for rent of said premises, which, under the decree appointing him receiver in this
75 cause, this respondent is required to take charge of and collect, and said Wilson refuses to pay over or deliver the same.

2. In answer to the second paragraph he denies that the interests of said petitioner are or can be jeopardized or in anywise affected by making said Wilson a party to this cause, inasmuch as the object is to compel said Wilson to deliver to the receiver the money and

draft referred to, and the possession of the receiver is the possession of whomsoever is shown to be ultimately entitled to the fund, and payment and delivery to him does not settle or determine the right of property.

3. In answer to the third paragraph he says that even if said funds in the hands of said Wilson are justly and properly payable to petitioner, yet until the justice and propriety and legality of the demand of petitioner has been judicially determined said funds should be in the hands of the receiver.

76 And, further answering said petition, so far as it adopts the answer of said Wilson as part of said petition, he says that he admits it to be true that said Wilson was employed by complainant Shepherd some time in the year 1876 to collect from the United States a claim for the sum of $4,200 for rent of the premises described in these proceedings for the year ending June 30th, 1876; that suit was instituted, as shown by "N. W. Exhibit No. 1," in the U. S. Court of Claims December 7, 1876, where a judgment was rendered for the claimants for $1,800, which was subsequently affirmed by the United States Supreme Court.

He admits also that while said cause was pending in the Supreme Court another petition was filed for the recovery of rent at the same rate for the two succeeding years; and he says that since last petition was filed, December 21, 1878, and said decision of the

77 Supreme Court was rendered, December 23, 1878, and rendered nugatory the said last petition by adjudging the claimant entitled only to demand and receive from the United States the sum of $1,800, which amount had been appropriated by the Congress of the United States for the year 1876 and for each of the years 1877 and 1878 as in full of demand for rent of said premises for each of said years.

He also admits that while said suit for $4,200 for rent of said premises for the year 1876 was pending in the said Court of Claims, but before judgment rendered therein, the said assignment of June 21,1877, of which he believes "N. W. Exhibit No. 2" is a true copy, was executed by the several assignors, but he denies that it was intended or understood by him, this respondent, nor does he believe that it was understood at the time by said Wilson or said John W. Thompson to be anything more than an assignment of the

78 claim then pending in the said Court of Claims for the sum of $4,200, upon which judgment was subsequently recovered for $1,800. the amount originally appropriated as aforesaid; and he avers that said assignment upon its face and in view of the circumstances surrounding it is not susceptible of any other interpretation; and he further avers that not until after the said decision of the Supreme Court U. S. did he ever hear it claimed or intimated that said assignment covered the claim for rent for the years 1877 and 1878, which rent at the time of the assignment had not accrued, and that immediately upon such claim being made to him by said Wilson this respondent denied to said Wilson that said assignment was so intended or could be so construed.

He further admits that he endorsed said draft issued in payment

of said judgment; that said Shepherd required that said lots
79 should be released, and that said Wilson should pay to this respondent 2½ per cent., and that said sum of $45 was paid to this respondent, and that said Wilson assured said Shepherd that upon payment the said releases would undoubtedly be made; but he avers that his said endorsement was made by him upon the assurance to him by said Wilson that the said money would be retained in his hands subject to the order of the court; and he further says that these matters all transpired prior to the decree appointing this respondent receiver in this cause, and that at the time thereof he believes that said Thompson would ultimately receive the amount of said judgment.

He further says that he executed the said assignment as a formal party for the purpose of assigning to said Thompson the said claim of $4,200 then pending in the Court of Claims, and that he
80 has no personal wish or purpose to deprive said Thompson of the benefit of the said judgment for $1,800, and demanded the payment of it from said Wilson only as a duty imposed upon this respondent, as receiver by said decree, with the full knowledge that the possession of the receiver would be in the right of whoever establishes a valid claim to the fund; that as to the said sum of $4,500 he holds it subject to the order of the court should any other person than said Thompson be hereafter shown to be entitled to the fund, and shall make return therefor in his accounts.

He admits that said Wilson is entitled to be reimbursed the money expended by him in costs and expenses of said suit, and to receive a fair compensation for his services rendered therein in the Court of Claims and the Supreme Court of the United States, and considers the fee charged by him a reasonable one, but submits that the
81 rights of said Wilson in said behalf can be fully protected by the court if the money be paid over to the receiver, and that it is the duty of said Wilson to pay and deliver to this respondent, as receiver, the said money and draft.

And having fully answered, &c.

A. C. BRADLEY, *Receiver.*

DISTRICT OF COLUMBIA, *ss:*

Andrew C. Bradley, being duly sworn, deposes and says that the foregoing answer by him subscribed, so far as stated upon his own knowledge, is true, and so far as stated upon information received from others he believes it to be true.

A. C. BRADLEY.

Subscribed and sworn to before me this 28th day of June, 1879.

[SEAL.] W. P. BELL,
Notary Public.

82 *Replication of A. C. Bradley, Receiver, to Answer of Nathaniel Wilson. Filed June 28, 1879. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.* } Eq. No. 5723.

Andrew C. Bradley, the receiver in the above-entitled cause, joins issue with Nathaniel Wilson upon his answer to the petition of said receiver.

A. C. BRADLEY, *Receiver.*

83 *Supplemental Petition of A. C. Bradley, Receiver, Asking that N. Wilson be Ordered to Deliver Draft. Filed June 28, 1879. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
THE FREEDMAN'S SAVINGS & TRUST COMPANY *et al.* } Equity No. 5723.

The supplemental petition of Andrew C. Bradley, receiver in the above-entitled cause, respectfully shows—

That since the filing of his petition herein, on the 24th day of May last, he has learned that Nathaniel Wilson has received from the United States Treasury a draft for $3,475, being for rent of the premises mentioned in the proceedings in this cause, and which he is required to collect by the said order appointing him receiver.

84 That on the 24th day of May last your petitioner was informed at the United States Treasury that a claim for the amount of $3,475 for rent of said premises had been duly audited and, at the instance of Nathaniel Wilson, had been made "special" in the warrant division of said department, and that a draft for the amount would be made out that day and mailed to said Wilson as attorney; that thereupon your petitioner filed in said office a letter reciting his appointment as receiver and asking that said draft be delivered to no one but him, and it was understood that said draft should be withheld for the time.

That subsequently, on the 2nd day of June, upon inquiry at said Department, petitioner was informed that said draft had been mailed by mistake to said Wilson, and that he would be requested

85 to return it, and he charges that said Wilson was so requested by letter to return said draft, but refused to do so, and that said Wilson also refused and still refuses to deliver the same to your petitioner, although fully informed as to his appointment.

Wherefore petitioner prays that said Wilson be required by order of this court to deliver said draft to petitioner, and that petitioner have such other and further relief as the nature of the case demands.

A. C. BRADLEY, *Receiver.*

DISTRICT OF COLUMBIA:

Andrew C. Bradley, being duly sworn, says that the facts stated in the foregoing petition are true to the best of his knowledge, information, and belief.

A. C. BRADLEY.

Subscribed and sworn to before me this 28th day of June, 1879.

[SEAL.] WM. P. BELL,
Notary Public.

86 *Petition to Pay Funds into Court Refused and Motion to Pay Same to Thompson Denied. Filed June* 30, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
CRESWELL *et al.* } Equity No. 5723.

The petition of Andrew C. Bradley, receiver in the above-entitled cause, praying that Nathaniel Wilson bring into court certain money collected and held by him, coming on to be heard, and the same having been read to the court, together with the answer thereto filed by said Wilson, and said petitioner and the commissioners of the Freedman's Saving and Trust Company having been heard by counsel, and John W. Thompson, intervening for his interest in that behalf, having also been heard by counsel, it is thereupon,

87 this 30th day of June, A. D. 1879, ordered by the court that the prayer of said petition asking that said Wilson be required to pay into court the funds — the said petition and the answer of said Wilson mentioned be and the same is hereby, refused and the motion made for direction to the said receiver that he pay said fund to said Thompson is also denied.

By the court:

MACARTHUR, *Justice.*

88 *Motion to Modify Injunction. Filed July* 12, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 2nd day of July, A. D. 1879.

A. R. SHEPHERD *et al*, Comp.,
vs.
CRESWELL *et al.*, Def. } Eq. No. 5723.

Nathaniel Wilson, holder of certain funds mentioned in the proceedings of this cause, and John W. Thompson, claimant of said

funds, and intervening in the suit for his own interest, come and move the court to vacate and modify the injunctions issued in said cause on the 18th day of March, A. D. 1878, and on the 10th day of May, A. D. 1879, so far as the said injunctions affect the rents of the premises mentioned in the cause which have been collected by said Wilson, or for which checks or drafts of the United States have been issued and delivered to him, and for grounds of this
89 motion they say that as to the said rents the said injunctions were improvidently issued.

R. T. MERRICK,
Sol. for N. Wilson & J. W. Thompson.

To A. C. Bradley, Esq., solicitor for complainants, and Enoch Totten, Esq., solicitor for defendants:

Please take notice that on Saturday, the 12th day of July, A. D. 1879, at the opening of the court, or as soon thereafter as the court will hear us, I will ask the court to take up the foregoing motion.

R. T. MERRICK,
Sol. for N. Wilson & John W. Thompson.

Endorsed: A. C. Bradley, Esq.

90 *Motion to Modify Injunction. Filed July* 12, 1879.

In the Supreme Court of the District of Columbia, the 2nd day of July, A. D. 1879.

A. R. SHEPHERD *et al.*, Comp.,
vs.
CRESWELL *et al.*, Defend. } Eq. No. 5723.

Nathaniel Wilson, holder of certain funds mentioned in the proceedings in this cause, and John W. Thompson, claimant of said funds, and intervening in the suit for his own interest, come and move the court to vacate and modify the injunctions issued in said cause on the 18th day of March, A. D. 1878, and on the 10th day of May, A. D. 1879, as far as the said injunctions affect the rents of the premises mentioned in the cause which have been collected by said Wilson, or for which checks or drafts of the United States have been issued and delivered to him, and for grounds of this motion
91 they say that, as to the said rents, the said injunctions were improvidently issued.

R. T. MERRICK,
Solicitor for N. Wilson & J. W. Thompson.

To A. C. Bradley, Esq., solicitor for complainants, & Enoch Totten, Esq., solicitor for defendants:

Please take notice that on Saturday, the 12th day of July, A. D. 1879, at the opening of the court, or as soon thereafter as the court will hear us, I will ask the court to take up the foregoing motion.

R. T. MERRICK,
Sol. for N. Wilson & J. W. Thompson.

Endorsed: Enoch Totten, Esq.

92 *Affidavit of Rob't H. T. Leipold. Filed July* 12, 1879. *R. J. Meigs, Clerk.*

DISTRICT OF COLUMBIA, *County of Washington,* } ss:

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD & Others
v.
F. S. & T. Co. and Others. } Equity No. 5723.

Robert H. T. Leipold, being duly sworn, deposes and says that he is one of the commissioners of the Freedman's Savings and Trust Company and — of the defendants in the above-entitled cause of action; that said commissioners have in their possession the promissory notes of A. C. Bradley amounting to $14,600.00, secured by a deed of trust on the property involved in this suit, and which promissory notes, though long overdue, remain still unpaid; no interest having been paid on the said notes since December 9th, 1874, and being
93 enjoined from realizing on the security, and fearing that on account of the general depreciation in the value of real estate the said commissioners would be unable ultimately to collect the full amount of said notes, they, the commissioners, filed their petition in this court for the appointment of a receiver and an injunction; and deponent further says, upon information and belief, that by general consent of counsel an injunction was obtained on the 18th day of March, 1878, enjoining the complainants and their agents from collecting any further rents for said premises. Finding that notwithstanding this injunction the rents were still being collected by one of the complainants, the said commissioners subsequently again applied to this court for the appointment of a receiver, and, owing to the peculiar circumstances of the case, Mr. Andrew
94 C. Bradley was, by consent of counsel, appointed. On account of adverse interest the commissioners at first opposed the appointment of Mr. Bradley, but, rather than fail in securing the appointment of a receiver, finally consented thereto. The said commissioners never authorized the said Bradley to endorse any Treasury draft or drafts issued in payment of any — said rents, nor did they even hear of any such endorsement until long after it was made; nor have they ever, either directly or indirectly, authorized, consented to, or acquiesced in the collection of any rents accruing from said premises by J. W. Thompson, Nathaniel Wilson, his attorney, or any other person, save and except the said Andrew C. Bradley, receiver as aforesaid.

Subscribed and sworn to before me this 1st day of July, A. D. 1879.

[SEAL.] D. RITTENHOUSE,
Notary Public.

95 *Order Referring Cause to Auditor. Filed Sep.* 26, 1879. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. SHEPHERD *et al.*
v.
F. S. & T. Co. *et al.*
} Equity No. 5723.

On motion of Enoch Totten, Esq., solicitor for the commissioners of the Freedman's Savings and Trust Company, it is, this 26th day of September, 1879, ordered that this cause be, and the same hereby is, referred to the auditor of this court to consider the matters and things involved in the petition of Andrew C. Bradley, receiver, and the answers thereto, and to distribute the funds in the hands of Nathaniel Wilson according to law, and for this purpose he shall take all testimony competent and material and return the same with his report and account in the cause.

96 By the court:

MACARTHUR, *Justice.*

We consent to the foregoing order.

MERRICK AND MORRIS,
For Nathaniel Wilson & J. W. Thompson.
ENOCH TOTTEN,
Att'y for Com'rs F. S. & T. Co.

97 *Petition of Auditor to Have Reference Changed. Filed Oct.* 15, 1879. *R. J. Meigs.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
v.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.*
} 5723, Eq. Doc. 17.

To the Honorable A. MacArthur, justice, holding the special term:

The undersigned, auditor of the court, respectfully prays that so much of the order passed in this cause on the 26th day of September, 1879, as refers the cause to him be modified by the substitution of a special auditor, there being personal reasons why the undersigned should not audit the said matter.

JAS. G. PAYNE, *Auditor.*

98 *Order Referring Cause to Eugene Carusi, Esq., as Special Auditor, to Take Testimony and Report, &c. Filed Oct.* 31, 1879. *R. J. Meigs.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.* } Equity No. 5723.
v.
F. S. & T. Co. *et al.* }

It having been suggested that James G. Payne, auditor of this court, was consulted as counsel by one of the parties in this cause and declines to act, it is this 31 day of October, 1879, ordered that this cause be, and the same hereby is, referred to Eugene Carusi, Esq., as a special auditor to take such testimony as may be offered by the contending parties, and to report upon the matters and things involved in the petition of A. C. Bradley, receiver, and the
99 petition of John W. Thompson, and to report as to the proper distribution of the funds and draft in the hands of Nathaniel Wilson.

By the court:

MACARTHUR, *Justice.*

We consent.

ENOCH TOTTEN,
For F. S. & T. Co.
MERRICK & MORRIS,
Sol. for N. Wilson & J. W. Thompson.

100 *Motion to Dissolve Restraining Order of August 2nd, 1877. Filed Jan.* 8, 1880.

In the Supreme Court of the Dist. of Co.

A. R. SHEPHERD *et al.* } Equity No. 5723.
v.
F. S. & T. Co. *et al.* }

And now come the defendants, the Commissioners of the Freedman's Savings & Trust Co., and move the court to dissolve and set aside the restraining order granted in this cause on the 2nd day of August, 1877, and for reason say that the original cause, being equity cause No. 4260, wherein Edward Clark, trustee, and others are complainants and the Commissioners of the Freedman's Savings and Trust Company are defendants, has been finally determined by the Supreme Court of the United States, for proof of which reference is made to the record in the said cause in this court.

ENOCH TOTTEN,
For Comm'rs.

101 *Notice of Motion to Dissolve Restraining Order of Aug.* 2, 1877. *Filed Jan.* 17, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.*
v.
F. S. &. T. Co. *et al.* } Equity No. 5723.

Please take notice that on Saturday, the 10th day of January, 1880, at the opening of court on that day or as soon thereafter as counsel can be heard, I shall move the court to dissolve the restraining order granted in the above-entitled cause on the 2nd day of August, 1877.

ENOCH TOTTEN,
For Comm'rs F. S. & T. Co.

To A. C. Bradley, Esq., for compl'ts.

Service of above — this 8th of January, 1880.

A. C. BRADLEY,
Per W. P. BELL.

102 *Order Dissolving Restraining Order. Filed Jan.* 17, 1880. *R. J. Meigs, Clerk.*

Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
vs.
JOHN A. J. CRESWELL & OTHERS, Comm'rs, &c., *et al.* } Eq., 5723.

This cause having come on to be heard on the motion of the defendants to dissolve the restraining order of August 2nd, 1877, restraining proceedings towards making a sale, and counsel for defendants having been heard, it is this 17th day of January, 1880, ordered that said restraining order be, and the same hereby is, dissolved and set aside.

CH'S P. JAMES, *Justice.*

103 *Petition of Commissioners of the F. S. and T. Company for Possession of Premises, etc. Filed Feb.* 28, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD
v.
JOHN A. J. CRESWELL & OTHERS. } Eq. No. 5723.

The petition of John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, respectfully shows as follows, to wit:

That the property involved in the above-entitled cause was, on the

sixteenth (16) day of February, 1880, duly sold under the powers contained in the deed of trust mentioned in the proceedings by the trustee therein named, and that your petitioners were the highest bidders at such sale and became the purchasers thereof, and
104 that they are now entitled to the possession of the said property.

They therefore pray that the receiver in this cause may be directed to deliver the property over to the possession of these commissioners, and that they may be authorized to collect the rents accruing therefrom from and after the date of sale, and that the cause may be referred to an auditor to state the accounts of the said receiver.

JOHN A. J. CRESWELL,
ROBERT PURVIS,
ROBERT H. T. LEIPOLD,
Comm'rs F. S. and T. Co.

DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

Robert H. T. Leipold, being first duly sworn, deposes and says that he is one of the commissioners of the Freedman's Savings and Trust Company, and that he has read the foregoing petition by him subscribed and knows the contents thereof; that the
105 facts therein stated upon personal knowledge are true and those stated upon information and belief he believes to be true.

ROBERT H. T. LEIPOLD.

Subscribed and sworn to before me this 27th day of Feb., 1880.
[SEAL.] D. RITTENHOUSE,
Notary Public.

106 *Order Directing Receiver to Surrender Possession of Premises to Com'rs F. S. & T. Co. and Referring Cause to Eugene Carusi, Esq.,— State Ac't, etc. Filed Feb.* 28, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *et al.*
v.
JOHN A. J. CRESWELL *et al.*, Com'rs (F. S. & T. Co.). } Equity No. 5723.

This cause having come on upon motion of the solicitor for the commissioners of the Freedman's Savings and Trust Company for an order directing the receiver, Andrew C. Bradley, to surrender possession of the premises mentioned and described in the proceedings to the commissioners of the Freedman's Savings and Trust Company, and it appearing to the satisfaction of the court that the said premises have been sold under the deed of trust held by
107 the com'rs of the Freedman's Savings and Trust Company and mentioned in the proceedings in this cause and purchased by them, it is this 28th day of February, 1880, ordered that the

receiver deliver to the commissioners of the Freedman's Savings and Trust Company the possession of the said property, and that the said commissioners be, and they hereby are, authorized to apply for, collect, and receive the rents, issues, and profits of the said property hereafter falling due.

It is further ordered that this cause be, and the same hereby is, referred to Eugene Carusi, Esq., to state the account of the said receiver and return the same to this court with his report upon the order heretofore made in this cause referring to him certain questions of difference existing between the said receiver and John W. Thompson.

CH. P. JAMES, *Justice.*

We agree to the foregoing decree.

MERRICK & MORRIS,
Sol'r- for John W. Thompson.

108 *Notice of Motion for Filing Sup. Petition of John W. Thompson. Filed Oct.* 30, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD, Compl't, *vs.* F. S. & T. COMPANY, Def't. } Eq. No. 5723.

To A. C. Bradley, Esq., sol. for compl't; Enoch Totten, Esq., sol. for def'd't:

Please take notice that on Saturday next, the 30th day of October, 1880, at the opening of the court or as soon thereafter as the court will hear us, we will move leave to file a supplemental petition of John W. Thompson in the above-entitled cause. A copy of said petition is herewith annexed.

MERRICK AND MORRIS,
Sol. for Petitioner, John W. Thompson.

Service of foregoing notice & receipt of copy of the petition therein mentioned acknowledged this 25 day of Oct., A. D. 1880.

ENOCH TOTTEN,
For F. S. & T. Co.
A. C. BRADLEY,
Sol. for Compl't.

109 *Supplemental Petition of J. W. Thompson. Filed Oct.* 30, 1880.

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD, Compl't,
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY, Def. } Equity Doc. No. 5723.

The petitioner, John W. Thompson, who has intervened in the above-entitled cause, files this his amended and supplemental petition therein, by leave of the court first had and obtained, and he says:

1. Since the filing of his original petition in this case he has obtained a judgment at law against the complainant, Alexander R. Shepherd, for the sum of four thousand — ($4,000), with interest thereon from the 8th day of November, A. D. 1876, at the rate of 8 per centum per annum until paid, which judgment was ren-
110 dered on the 8th day of April, A. D. 1880, in cause No. 20935 on the common law docket of this court, and yet remains wholly unpaid and unsatisfied, although a writ of *fieri facias* has been issued therein, said writ having been returned unsatisfied. The petitioner files herewith a short copy of said judgment and of the return on said writ, marked "Petitioner's Exhibit A," and makes the same a part of this petition. The indebtedness, on account of which said judgment was rendered, is part of the indebtedness mentioned in the petitioner's original petition aforesaid, for which the complainant's agreement was made to assign the funds therein mentioned that were to be derived from the United States.

2. Upon said judgment the petitioner has also caused a writ of attachment by way of execution to be issued and laid in the hands of Nathaniel Wilson, one of the respondents in this cause,
111 but, on account of the facts apparent in the record, the said Wilson cannot pay the funds in his hands under said writ of attachment.

3. Since the filing of his original petition aforesaid the petitioner has entered suit against said Alexander R. Shepherd, on the common law side of this court, upon two promissory notes of said Shepherd, held by this petitioner and amounting to the sum of fifteen thousand ($15,000) dollars, which were also intended to be secured by the agreement or assignment aforesaid in reference to the funds in the hands of Nathaniel Wilson, E'q. Said suit is No. 21709 at law.

4. The petitioner believes and so charges that the said Alexander R. Shepherd has no property in this District liable to execution at common law.

5. The petitioner further charges that said Alexander R. Shepherd is now and has been for several years utterly insolvent.

112 6. The petitioner further charges that, since the filing of his original petition in this cause, the said Alexander R. Shepherd has removed from the District of Columbia and from the United States of America, and is no longer a resident of said Dis-

trict or of the United States, and he is believed to have become a resident of the Republic of Mexico.

7. It is therefore impracticable now to sue said Shepherd at common law on the covenant contained in the paper writing heretofore filed in this cause as "Exhibit No. 2" to the answer of said Nathaniel Wilson, and the funds in the hands of said Wilson and the proceeds of the drafts or warrants in his hands should equitably be applied to the satisfaction of this petitioner's claim.

8. The petitioner therefore prays that this his petition be answered by the other parties to this suit, and, with such
113 answers, be referred to the special auditor or referee heretofore appointed in the cause for action thereon, in connection with his original petition; and he prays for such other and further relief as the nature of the case may require.

J. W. THOMPSON.

I do solemnly swear that I have read the foregoing petition signed by me and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

J. W. THOMPSON.

Subscribed and sworn to before me this 19th day of October, A. D. 1880.

[SEAL.] GEO. H. B. WHITE,
Not. Public.

114 *Report of Special Auditor. Filed Dec. 15th*, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *et al.*
vs.
THE FREEDMAN'S SAVINGS & TRUST COMPANY *et al.* } Eq., 5723.

This cause was referred to me, as a special auditor, on October 31st, 1879, to take such testimony as might be offered by the contending parties, to report upon the matters involved in the petition of A. C. Bradley, receiver, and the petition of John W. Thompson, and to report as to the proper distribution of the funds and draft in the hands of Nathaniel Wilson.

Under this reference I have taken the depositions of R. H. T. Leipold, Nathaniel Wilson, John W. Thompson, and Andrew C. Bradley, which are returned with this report.

115 The pleadings and proofs in the cause establish the following facts:

On the 9th day of June, 1873, Andrew C. Bradley and wife conveyed certain real estate in this city to Alvord and Stickney, trustees, to secure to the Freedman's Savings and Trust Company the pay-

ment of five promissory notes, dated June 9, 1873, and maturing, respectively, in one, two, three, four, and five years after date, with interest at 8 per cent. per annum, payable semi-annually. This deed of trust provides that until default is made in the payment of any one of said notes or of any instalment of interest due thereon the grantor, his heirs or assigns, shall be entitled to the rents of the property, and that upon such default said trustees shall sell the property and apply the proceeds of sale to the payment of "whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not."

116 The first of said notes and three instalments of interest on the remaining four notes had been paid when the bill of complaint was filed in this cause.

On the 6th of June, 1873, Bradley executed a lease of the property to the United States for a term of three years from June 5, 1873, with the privilege of renewal for an additional term of two years.

The rent renewed by said lease was payable quarterly, viz., on September 30th, December 31st, March 31st, and June 30th in each year.

The United States entered under this lease and paid the stipulated rent to Bradley and his grantee down to June 30, 1875.

On September 11th, 1874, Bradley (who was the nominal and ostensible owner merely, Shepherd being the real owner of the property) by deed dated August 27, 1874, conveyed the property to Shepherd in fee.

Although not mentioned in the deed to Shepherd, it is a fact alleged in the bill and admitted in the answer of the com-

117 missioners of the Freedman's Savings and Trust Company, and that the payment of the notes held by the company was assumed by Shepherd, and that he took the conveyance from Bradley, subject to the deed of trust to Alvord and Stickney.

On the 21st of November, 1874, Bradley formally assigned said lease to Shepherd and notified the lessee thereof.

On the 15th November, 1876, Shepherd made an assignment of all his property, including the lease to Taylor, Bacon, and Cross, for the benefit of his creditors. The rent reserved by the lease for the year ending June 30, 1876, not having been paid, Shepherd, on the 7th of December, 1876, by his attorney, Nathaniel Wilson, Esq., entered suit therefor in the Court of Claims, and obtained a judgment therein for $1,800, which was affirmed by the Supreme Court of the U. S. on appeal.

Pending the appeal to the Supreme Court, a second suit

118 was instituted by Shepherd in the Court of Claims for the rent reserved in the lease for the years ending June 30, 1877, and June 30, 1878. The further prosecution of this suit was rendered useless by the decision on appeal in the first suit.

On May 3, 1879, a draft was issued by the United States Treasury for $1,800, payable to the order of Bradley, to the use of Shepherd, to the use of Taylor, Bacon, and Cross, trustees, and delivered to Wilson. These several payees endorsed the draft, and Wilson was directed by Shepherd to pay the proceeds thereof, after deducting his

fees and costs and expenses of suit and two and a half per centum for Bradley, to John W. Thompson, on condition that he executed a deed of release of certain lots of ground.

Subsequently to the receipt of the $1,800 draft Wilson presented to the United States a bill for rent for the years ending June 30, 1877, and June 30, 1878, and in due time received a second
119 draft from the Treasury, payable to Bradley, to the use, &c., in the first draft. This draft for $3,475 is in the hands of Wilson and has never been endorsed.

On May 10, 1879, Bradley was appointed receiver to take charge of the leased property and to receive the rents then due.

On June 25th, 1879, John W. Thompson filed his petition in this cause, claiming the money and draft in Wilson's hands by virtue of an agreement between Bradley and Shepherd of the one part and himself of the other part, which agreement is filed with Wilson's answer as Exhibit N. W. No. 2.

The deed from Shepherd to Taylor, Bacon, and Cross was not produced in evidence, but Bradley testifies (and his testimony was received without objection) that under its provisions Shepherd was entitled to receive and collect all the rents of the property conveyed by it, and his trustees had no interest in or control over the
120 rents until default and sale under the deed. (Testimony, p. 116, 117.)

Although the agreement between Bradley and Shepherd and Thompson is not an assignment in law of the claim for rent, but is an agreement to appropriate the proceeds of the claim, when collected, to the payment of the debt due to Thompson, yet that it is within the prohibition of the act of Congress of February 26, 1853, would seem to be settled by the decision of the Supreme Court of the U. S. in Spofford *vs.* Kirk, 7 Otto, 484.

If the equitable effect of the orders and acceptances in that case was to transfer a portion of the drawer's claim against the United States to the payees, so also, and for the reason there given, was this agreement an equitable assignment of the whole claim.

Further, in delivering the opinion, the court say: "Another and greater danger intended to be guarded against by the act of
121 Congress was the possible combination of interests and influences in the prosecution of claims which might have no real foundation."

Now, whether the agreement relied on in this case be an assignment of the claim or an agreement to pay over to Thompson the specific proceeds thereof, its tendency was to combine interests and influences in the prosecution of the claim, and so was within the mischief intended to be prevented by the statute.

It is also claimed on Thompson's behalf that he is entitled to the proceeds of the $1,800 draft by reason of the endorsement and delivery thereof to Wilson, as stated above.

Whether said agreement, although null and void while executory, was sufficient when executed to sustain the delivery of the draft or the payment of the proceeds thereof to Thompson, had such delivery or payment been actually made—in other words, whether Shepherd

could have recovered back from Thompson the said proceeds
122 had they been actually paid over to him—is a question which, it seems to me, is unnecessary to be determined. In point of fact the proceeds never were paid to Thompson, and Wilson, in whose hands they were stayed by injunction order passed March 18, 1878, was not his agent or attorney. The proceeds were stopped *in transitu*, as it were, and the fund is under control of the court. Moreover, Wilson's instructions were to pay over a certain portion of the proceeds to Thompson on the condition that he should release certain real estate from the lien of the deed of trust to William Thompson, which release does appear to have been executed.

On the other hand, by the appointment of a receiver on May 10, 1879, the claimant acquired a lien on the rents, as well those past due as those to become due.

(High on Receivers, s. 641 *et seq.*; Astor *v.* Turner, 11 Paige, 436; Lofsky *vs.* Maujer, 3 Sandf., Ch., 69.)

123 By the terms of the deed of trust to Stickney and Alvord, Bradley and his grantees and assigns were entitled to the rents, issues, and profits of the property until default made in the payment of the principal or of any one of the instalments of interest due to the F. S. & T. Co. Default was made in the payment of the semi-annual interest due December 9, 1874, whereby, by the terms of the deed, the whole debt became due and the trustees were authorized to sell the property. The whole fund in this cause consists of rents that became due after this default in the payment of interest. Shepherd took the property from Bradley subject to the incumbrance in favor of the F. S. & T. Co., and at the time of the filing of the cross-bill Shepherd was insolvent and the property was inadequate to satisfy the debt due to the company. Upon this state of facts the court granted the restraining order of March 18, 1878, and subsequently, on May 10, 1879, appointed Bradley receiver to
124 collect the rents due from the U. S.

In accordance with these views I have given the fund in controversy to the commissioners of the Freedman's Savings and Trust Company, and have stated the distribution thereof and the account of the receiver in the two schedules hereto annexed, marked, respectively, A and B and recapitulation.

Which is respectfully submitted.

Dec. 11th, 1880.

EUGENE CARUSI,
Special Auditor.

125 *Schedule A.*

To am't in hands N. Wilson:		
" am't proceeds 1st draft		$1,800 00
" am't of 2nd draft		3,475 00
		$5,275 00
Cr. N. Wilson, for costs, &c.	$250 00	
" N. Wilson, fees	350 00	
		600 00
		$4,675 00

Schedule B.

To am't in hands of receiver:	
" 7 mos.' rent, @ $125 per mo.	$875 00
Cr. by commissions, @ 10 per cent.	87 00
	$787 50

Recapitulation.

Nett am't cash hands N. Wilson	$1,200 00
Am't draft " do.	3,475 00
Nett am't cash hands of receiver	787 50
Am't due F. S. and T. Co.	$5,462 50

Dec. 11, 1880.

E. CARUSI, *Sp'l Auditor.*

Auditor's fee, $125, paid by F. S. & T. Co.

E. C.

126 *Exceptions to Auditor's Report. Filed Jan.* 4, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 3rd day of January, A. D. 1881.

ALEX. R. SHEPHERD *et al.*, Compl't-,
vs.
FREEDMAN'S SAVINGS & T. Co. *et al.*, Def'ts. } Eq. No. 5723.

John W. Thompson, who has intervened by petition in the above-entitled cause, comes and excepts to the report of the special auditor filed therein on the 15th day of December, A. D. 1880, and for cause of exception he respectfully shows as follows:

1st. The special auditor has erred in holding that the agreement between this petitioner on the one part and the complainant Shepherd and his trustees on the other, whereby he claims the
127 fund in the hands of the respondent Wilson is null and void under the law.

2. The special auditor has erred in holding that the proceeds in the hands of said Wilson were not to be paid over to the petitioner Thompson, except upon condition that said petitioner should release certain real estate from the lien of a deed of trust to William Thompson. The testimony in the case does not establish any such condition.

3. The special auditor has erred in holding that the appointment of a receiver in this case on May 10, 1879, gave the Freedman's Savings and Trust Company a lien on the rents of the property mentioned in the cause, as well those then due as those thereafter to become due, as against the claim of the said petitioner, John W. Thompson.

4. The special auditor has erred in holding that the petitioner is not entitled to the proceeds in the hands of the respondent,
128 Nathaniel Wilson, and that the Freedman's Savings and Trust Company is entitled to the same.

5. The report of the special auditor is erroneous in divers other respects.

MERRICK AND MORRIS,
Solicitors for Petitioner, John W. Thompson.

129 *Motion to Vacate Orders of Reference to Special Auditor and Report. Filed Jan'y* 15, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
THE COMMISSIONERS OF THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.* } Equity No. 5723.

And now come the complainants and move the court to vacate the orders of reference to Eugene Carusi, Esq., special auditor, and the report of said special auditor based thereon as improvidently issued and made, because no process had been issued upon the cross-bill filed in this cause, and no appearance or answer entered or filed thereto by the complainant, because the said orders of reference were made without their consent and without notice, and be-
130 cause of other irregularities apparent in the proceedins.

WM. F. MATTINGLY,
A. C. BRADLEY,
Solicitors for Complainants.

131 *Exceptions of Complainants to the Report of the Special Auditor. Filed Jan.* 15, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
CRESWELL *et al.* } Equity No. 5723.

And now come the complainants, and without waiving any right of objection to the irregularities in the orders of reference to the spe-

cial auditor, the proceedings before him, and to his report, except to the report of the special auditor filed herein for the following reasons:

1. The special auditor failed to qualify for the performance of his duties by first taking the oath as required by law.

2. The special auditor served no notice of the hearings before him, either upon the complainants or upon their solicitors.

132 3. The said report is not justified by the orders of reference, and is not in accordance with the matters embraced therein.

4. The special auditor erred in holding that the appointment of the receiver in this cause gave him a lien to the commissioners of the Freedman's Savings and Trust Company, either upon rents due or those to become due.

5. The special auditor erred in holding that the fund in the hands of the receiver or that in the hands of Nathaniel Wilson, Esq., was rent of the premises in controversy.

6. The special auditor erred in holding that the said commissioners have a lien upon a fund not in the hands of the receiver.

7. The special auditor erred in awarding the fund in the hands of the receiver and that in the hands of Nathaniel Wilson, Esq., or either of them, the to commissioners of the Freedman's Savings and Trust Company.

133 8. The special auditor erred in not awarding that the fund in the hands of Nathaniel Wilson, Esq., should be turned over to the receiver.

9. The special auditor erred in not holding that the complainant, Alexander R. Shepherd, was entitled to the whole fund and in not so awarding said fund.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol'r- for Compl'ts.

134 *Motion to Set Aside the Auditor's Report. Filed Jan.* 15, 1881.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
CRESWELL *et al.* } Equity No. 5723.

And now come the complainants and move the court to set aside and vacate the report of the special auditor filed in this cause, because the special auditor did not qualify for the performance of the duties of his office by taking the oath required by law.

WM. F. MATTINGLY,
A. C. BRADLEY,
Solicitors for Compl'ts.

135 *Testimony Before Eugene Carusi, Esq., Special Auditor. Filed Feb. 10, 1881. R. J. Meigs, Clerk.*

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
v.
JOHN A. J. CRESWELL *et al.* } Equity No. 5723.

I, Eugene Carusi, the special auditor in the above-entitled cause, do hereby certify that the annexed depositions of R. H. T. Leipold, Nathaniel Wilson, John W. Thompson, and Andrew C. Bradley, with the accompanying exhibits, were taken by me under the order of reference passed in this cause.

EUGENE CARUSI,
Special Auditor.

136 In the Supreme Court of the District of Columbia.

A. R. SHEPHERD *et al.*
v.
JOHN A. J. CRESWELL *et al.* } Equity No. 5723.

WASHINGTON, D. C., *March* 20, 1880.

GENTLEMEN: Please take notice that on Tuesday next, the 23rd day of March, 1880, at the hour of 2 o'clock p. m., at my office, No. 490 Louisiana avenue N. W., city, I shall proceed with the reference in the above-entitled cause under the order of the court passed on the 28th ultimo.

Very respectfully,
EUGENE CARUSI,
Per E. A. B.

To Mess. Enoch Totten, A. C. Bradley, and Merrick & Morris, solicitors, &c.

Service of above notice acknowledged this 20th day of March, 1880.

ENOCH TOTTEN,
For Com'rs F. S. & T. Co.
A. C. BRADLEY,
Sol. for Shepherd.
MERRICK & MORRIS,
For Thompson & Wilson.

137 WASHINGTON, D. C., TUESDAY, *March* 23, 1880.

Met pursuant to notice hereto attached.

Present: Messrs. Enoch Totten and R. H. T. Leipold, counsel for commissioners of the Freedman's Savings and Trust Company, and Mr. M. F. Morris, counsel for Nathaniel Wilson and John W. Thompson.

Adjourned to Wednesday, March 24, 1880, at 2 o'clock p. m.

EUGENE CARUSI,
Special Auditor.

138 WASHINGTON, D. C., WEDNESDAY, *March* 24, 1880.

Met pursuant to adjournment.

Present: Mess. Totten, Leipold, and Morris, of counsel, and the referee.

R. H. T. LEIPOLD, a witness, of lawful age, produced and sworn on behalf of the commissioners of the Freedman's Savings and Trust Company.

By Mr. TOTTEN:

Q. Mr. Leipold, what is your business?

A. I am a commissioner of the Freedman's Savings and Trust Company, and an attorney-at-law.

Q. When did the commissioners take charge of the assets of the Freedman's Bank?

A. On the morning of July 13, 1874.

Q. Have they, since that time, been engaged in settling up the affairs of that concern?

A. They have.

Q. Will you state the history of the matters and things re-
139 lating to the E street property involved in this suit since you have had anything to do with it?

A. We found among the assets of the Freedman's Savings and Trust Company four notes signed by A. C. Bradley and drawn to the order of the Freedman's Savings and Trust Company, dated June 9th, 1873, for the sum of $2,650, $2,900, $3,150, and $5,900, respectively, and payable in two, three, four, and five years after their date.

Mr. CARUSI: Secured by the deed of trust of Bradley?

A. Yes, sir; the notes were secured by deed of trust from Andrew C. Bradley and Sue H. Bradley, his wife, to John W. Alvord and George W. Stickney, trustees, on the premises known as 915 E street northwest.

Mr. CARUSI: Just give the date of the deed of trust and when recorded, Mr. Leipold.

A. The deed of trust was dated June 9th, 1873, and——

140 Mr. CARUSI: Being the same deed of trust as mentioned in the proceedings in this cause?

A. Yes, sir; recorded in Liber —, folio —, being the same deed of trust mentioned in the proceedings in this cause. Default having been made in the payment of the notes and the interest, we notified Mr. Bradley of the fact, and stated to him that unless the notes were paid we should have to advertise and sell the property. We then found that the property had in the meantime been deeded to Mr. Shepherd and that he was the party to whom we were to look for the payment of the notes. We also addressed Mr. Shepherd on the subject, and Mr. Shepherd, under date of June, 11, 1875, wrote us a note, which I will introduce as evidence.

(Paper offered in evidence, marked "Exhibit No. 1," and hereto attached.)

141 EXHIBIT No. 1.

Alex. R. Shepherd, 910 Penn. Ave.

WASHINGTON, D. C., *June* 11, 1875.

Commissioners F. S. & T. Co.

GENTLEMEN: Pending the litigation on acc't of part lot 4, square 377, affecting title, I am instructed by counsel to postpone payment of deferred note, drawn by A. C. Bradley, due 12th inst., for $2,650.00 and interest, and interest on other deferred notes $478.00. So soon as this proceeding shall have been settled I shall pay the notes if the court so adjudges.

Truly yours, ALEX. R. SHEPHERD, *Owner.*

E. CARUSI,
Special Auditor.

142 Subsequently, in reply to further efforts for the collection of the notes and the interest, Mr. A. C. Bradley, under date of December 8th, 1875, addressed us a note, which I will introduce.

(Paper offered in evidence, marked "Exhibit No. 2," and hereto attached.)

143 EXHIBIT No. 2.

Andrew C. Bradley, attorney and counselor at law, Federal block, Cor. 7th & F Sts. P. O. Box 335.

WASHINGTON, D. C., *Dec. 8th*, 1875.

Com'rs F. S. & T. Co.

GEN'L'N: Inasmuch as the case of McGhan *vs.* Eaton *et al.*, relating to 915 E St., is still undetermined, it is not deemed advisable or safe to make further payments in its behalf until a decision is finally reached; thence notice as to accruing interest on note must be disregarded. As soon as he can safely do so Mr. Shepherd will settle the matter.

Y'r's, &c., A. C. BRADLEY.

E. CARUSI,
Special Auditor.

144 And also, under date of June 16th, 1876, Mr. Bradley again addressed a note to the commissioners on the same subject, in answer to further efforts on one part to collect the interest on the overdue note, and I will introduce that, too.

(Paper offered in evidence, marked "Exhibit No. 3," and hereto attached.)

145 "EXHIBIT No. 3."

Office of Andrew C. Bradley, attorney-at-law, "Webster Law Building," 505 D street.

WASHINGTON, D. C., *June* 16, 1876.

Commissioners of F. S. & T. Co.

GENT'N: Yours in relation to notes, &c.—McGhan property—received. The same objection to paying notes or interest which held during pending suit still holds, as an appeal has been taken to the Sup. C't U. S. which as yet is unperfected. No rent has been collected during the past year, as Congress appropriated only $1,800 conditionally. Wait until next week, after we see the nature of the appeal bond, before going to the extreme. Our title, you know, is bad and has not been perfected & you couldn't sell.

Yours truly, A. C. BRADLEY.

E. CARUSI,
Special Auditor.

146 Some time in July, 1876, the commissioners directed the trustees named in the Bradley deed of trust to advertize the property described in the said deed, and under date of July 11 it was so advertized. Thereupon Mr. Shepherd filed a bill for injunction and obtained a temporary restraining order.

Mr. CARUSI: Was that the bill in this case?

A. That is the bill in this case. Finding that the property was deteriorating and that Mr. Shepherd was collecting the rents accruing from the property, we made an effort and we instructed our counsel, Colonel Totten, to make an effort to have a receiver appointed for the purpose of collecting the rents and to have Mr. Shepherd enjoined from their further collection, and in pursuance of that direction to our counsel he obtained an injunction from the court in this case, dated March 18, 1878. After this, however, we learned
147 that Mr. Shepherd, notwithstanding this restraining order, was still collecting the rents on this property, and we thereupon requested our counsel to bring the matter to the attention of the court and to obtain such further order in the cause as might seem necessary to protect the interest of the Freedman's Savings and Trust Company, and on the 21st of Feb., 1878, we filed our petition in the cause for that purpose. The prayer of the petition was denied by the order on file in this case, dated Feb. 21, 1879. The commissioners then made another effort, and requested their counsel to file another petition for the appointment of a receiver,

which petition was filed in the case March 12, 1879, and a decree was made in pursuance of that (by consent of Wm. F. Mattingly, solicitor for A. R. Shepherd) on the 10th of May, 1879, appointing Mr. Bradley as receiver, and directing him to take charge of
148 the property, "and to apply to the Post Office Department of the United States for and collect and receive the rents now due and thereafter to become due, whether included in judgments of the Court of Claims, a special appropriation by Congress, or in drafts issued by the Treasury Department of the United States, and whether in the hands of any of the parties to this cause or not, for the use and occupation of the premises mentioned and described in the said proceedings," &c. Subsequent to this decree the suit mentioned as the McGhan case——

Mr. CARUSI: Subsequent to what decree?

A. This last decree of May 10th, 1879, appointing a receiver; the suit known as the McGhan suit was dismissed by the Supreme Court of the United States. Thereupon we requested our counsel to have the original restraining order granted in this case set aside
149 so as to enable us to proceed under the Bradley deed of trust and sell the property, and the restraining order was accordingly dissolved by the decree of the court, dated the 17th day of Jan., 1880, filed in this case. We thereupon directed the surviving trustee, Mr. George W. Stickney, to advertize and sell the property under the terms of the Bradley trust, which he did, the commissioners becoming the purchasers of the property at and for the sum of $8,500.00, subject to special and general taxes.

By Mr. TOTTEN:

Q. What was the date of the sale?

A. The date of the sale was February 16, 1880.

Q. Has a conveyance been made and delivered?

A. Mr. Stickney executed a deed to the commissioners, and the same has been placed on record and is recorded in Liber 934, folio 250, of the land records of the District of Columbia.

Q. Recorded when?

150 A. Recorded on the 20th day of February and dated on the 18th of February, 1880.

Q. What was due at the time of the sale for general and special taxes—about how much? Give it in a rough way.

By Mr. CARUSI (interposing):

Q. You bought it subject to these general and special taxes?

A. Yes, sir.

Q. Was it advertized to be sold subject to the general and special taxes?

A. Yes, sir.

Q. Have you got a copy of the advertisement?

A. (After examination of papers.) I don't seem to have a copy of the advertisement here. At the time of the sale there was due on

unpaid notes of Bradley the sum of $14,600.00 and $5,227.03 interest, being computed at the rate of 6 per cent. after the maturity of the notes.

Q. Now, which notes are still in the hands of the commissioners?

151 A. The four last notes. From the proceeds of the sale we paid an advertising bill incurred in August, 1877—the advertisement of the first sale for which he enjoined us—the old advertising bill incurred in August, 1877, amounting to $40.25, and for the advertising and auctioneer's fees for making the sale, $98.85, making a total of $139.10. The balance we applied in payment of the overdue interest as far as it was required, which left $3,133.87, which we applied in payment of part of the principal of the first overdue note, being the second of the series secured by the deed of trust; and the balance, $483.87, we applied to the second overdue note, being the third of the series secured by the deed of trust, leaving the sum of $11,466.13 due for principal upon the remaining notes.

Prior to the time when otherwise the statute of limitations would become operative on any of those notes we called
152 upon Mr. Bradley and secured from him an endorsement waiving the effects of the statute. This, I believe, has been done on two or three notes.

By Mr. TOTTEN:

Q. Mr. Leipold, it has been stated during the litigation which has arisen between Thompson and the commissioners of the Freedman's Bank that when the draft was issued by the Treasury Department for the $1,800.00 in payment of the judgment rendered by the Court of Claims the draft was endorsed by Shepherd and by Bradley, and that the disposition of the funds in a certain way as specified in the answer by Mr. Wilson was agreed upon by these parties. That took place long after the restraining order that was issued in March, 1878. Now, I want to know from you whether you or any of the commissioners, within your knowledge, were invited to that convention where that transaction was done,
153 and whether or not you were there or whether you had any knowledge or information about it?

A. I never knew anything about it until the matter was brought to my attention by yourself.

Q. When was that?

A. After the filing of the papers which called attention to it or after the argument had taken place in the court. I remember of your calling my attention to an opinion of Judge MacArthur in which he commented upon this consent having been given by the commissioners of the Freedman's Savings and Trust Company.

Q. You could not testify whether Mr. Creswell or Mr. Purvis, the other commissioners, had any knowledge of it?

A. I spoke to them about it and they said they had no knowledge of it whatever.

Q. When did you first get any intimation that a claim of that sort was urged? I want the date of your information, if you
154 can give it.

A. It was brought to my attention some time about the first day of July, 1879, just prior to my making an affidavit which was filed in this cause on the 2nd of July, 1879.

Q. Who has possession of that property now, or who collects the rents?

A. We do. I ought to have stated that an order has been made by the court discharging the receiver and directing him to turn over the property to the commissioners of the Freedman's Savings and Trust Company.

Q. Well, has he done that?

A. Upon presenting that order to the disbursing clerk of the Post Office Department, he has recognized our possession to the property from and after the date of sale and has paid us rent since that time.

Q. Has there ever been any agreement between the commissioners and anybody relating to a diversion of the proceeds of those
155 two suits in the Court of Claims, from the debt secured on that property?

A. Never.

Q. Have you made ony other efforts, aside from those mentioned in connection with this suit, to get possession of the proceeds of the judgments in the Court of Claims?

A. I do not remember any.

(Mr. Totten states that he here closes his examination of Mr. Leipold, but desires him to produce copies of the notes referred to in his testimony.)

(Cross-examination waived.)

R. H. T. LEIPOLD.

Adjourned until Thursday, March 22, 1880, at 2 o'clock p. m.

E. CARUSI,
Sp'l Auditor.

156 WASHINGTON, D. C., THURSDAY *March 25th*, 1880.

Examination postponed to Tuesday, March 30th, 1880, at two o'clock p. m.

EUGENE CARUSI,
Sp'l Auditor.

157 WASHINGTON, D. C., TUESDAY, *March* 30, 1880.

Met pursuant to postponement.

Present: Messrs. Carusi, Totten, Leipold, Wilson, and (subsequently) Morris.

Examination of Mr. LEIPOLD resumed.

Witness here produces the four promissory notes referred to in his testimony at the previous examination, and true copies of the same are offered in evidence, marked, respectively, Exhibits 4, 5, 6, and 7, and hereto annexed.

158 EXHIBIT No. 4.

Copy.

$2,650$^{00}_{100}$. WASHINGTON, D. C., *June* 9, 1873.

Two years after date I promise to pay to the order of the Freedman's Savings and T. Co. twenty-six hundred and fifty dollars, at —, value received, with interest at 8 per cent. per annum, payable semi-annually.

(Signed) A. C. BRADLEY.

No. —. Due ——.
Secured by deed of trust duly stamped.

True copy.

E. CARUSI,
Special Auditor.

Endorsements on back:

Int. paid to Dec. 9, '73.
" " " June 9, '74.
" " " Dec. 9, '74.

2,650
Int., 107 77

2,757 77 6–12–'75.

In consideration of forbearance to sue at this time I hereby waive all benefit of the statutes of limitation.
May 23, '78.
(Signed) A. C. BRADLEY.

Rec'd, Feb'y 16, 1880, $2,650 & 851.09, interest to date on this note.
(Signed) G. W. STICKNEY,
Su. Trustee.

159 EXHIBIT No. 5.

Copy.

$2,900.00. WASHINGTON, D. C., *June* 9, 1873.

Three years after date I promise to pay to the order of the Freedman's Savings and Trust Company twenty-nine hundred dollars, at —, value received, with interest at 8 per cent. per annum, payable semi-annually.

(Signed) A. C. BRADLEY.

No. —. Due ——.
Secured by deed of trust duly stamped.

True copy.

E. CARUSI,
Sp'l Auditor.

Copy of endorsements.

Int. paid to Dec. 9, '73.
" " " June 9, '74.
" " " Dec. 9, '74.

In consideration of forbearance to sue at this time I hereby waive all benefit of the statutes of limitation, reserving, of course, any other right of defence to which I am entitled.
June 11, '79.
(Signed) A. C. BRADLEY.

Rec'd interest in full to Feb'y 16, '80 ($989.38), & 483\frac{89}{100}$ on ac. of principal.
(Signed) GEO. W. STICKNEY,
Su. Trustee..

160 EXHIBIT No. 6.

Copy.

$3,150.00. WASHINGTON, D. C., *June* 9, 1873.
Four years after date I promise to pay to the — of the Freedman's Saving and Trust Company thirty-one hundred and fifty dollars, at —, value received, with interest at 8 per cent. per annum, payable semi-annually.
(Signed) A. C. BRADLEY.

No. —. Due ——.
Secured by deed of trust duly stamped.

True copy.

E. CARUSI,
Sp'l Auditor.

Copy of endorsements.

Int. paid to Dec. 9, '73.
" " " June 9, '74.
" " " Dec. 9, '74.
Rec'd int. in full to Feb'y 16, 1880 ($1,137.67).
(Signed) G. W. STICKNEY,
Su. Trustee.

161 EXHIBIT No. 7.

Copy.

$5,900.00. WASHINGTON, D. C., *June* 9, 1873.
Five years after date — promise to pay to the order of the Freedman's Savings and Trust Company fifty-nine hundred dollars, at —, value received, with interest at 8 per cent. per annum, payable semi-annually.
(Signed) A. C. BRADLEY.

No. —. Due ——.
Secured by deed of trust duly stamped.
True copy.

E. CARUSI,
Sp'l Auditor.

Copy of endorsements.

Int. paid to Dec. 9, '73.
" " " June 9, '74.
" " " Dec. 9, '74.

Rec'd int. to date, Feb'y 16, '80 ($2,248.89).
(Signed) G. W. STICKNEY,
Sur. Trustee.

162 Mr. TOTTEN: I offer in testimony, Mr. Referee, a deed from the Freedman's Savings and Trust Company to Andrew C. Bradley, dated June 16th, 1873, of which this is a copy.
(Paper produced, marked "Exhibit No. 8," and hereto annexed.)

163 EXHIBIT No. 8. E. Carusi, Sp'l Auditor.

Deed from the Freedman's Savings and Trust Company to Andrew C. Bradley. Dated June 16, 1873.

This indenture, made the sixteenth day of June, in the year eighteen hundred and seventy-three, between the Freedman's Savings and Trust Company, a corporation duly incorporated by act of Congress approved March 3, 1865, of the first part, and Andrew C. Bradley, of the city of Washington, District of Columbia, of the second part, witnesseth:

That whereas at a meeting of the board of trustees of said corporation, party of the first part, held in the city of Washington, District of Columbia, on Thursday, the twelfth day of June, A. D. 1873, the said board accepted the offer of the said party of the second part to purchase the piece or parcel of land and premises hereinafter described at and for the sum of eighteen thousand and five hundred dollars, and authorized and directed its president to execute a deed thereof to said party of the second part, as is testified by the signature of the secretary of said board hereto annexed:

Now, this indenture witnesseth that the said party of the first part, for and in consideration of the sum of eighteen thousand and five hundred dollars ($18,500), to it paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, transferred, conveyed, and confirmed, and doth by these presents grant, bargain and sell, transfer, convey, and confirm, unto the said party of the second part, his heirs and assigns, all that certain piece or parcel of land situate and lying in the city of Washington aforesaid, known and described as part of lot number four (4), in square numbered three hundred and seventy-seven (377), beginning for the same at the southwest

corner of said lot and running thence on the line of E street twenty-four (24) feet, thence north one hundred and fifty-nine (159) feet to an alley, thence west twenty-four (24) feet, and thence south one hundred and fifty-nine (159) feet to the place of beginning, together with all the improvements, ways, easements, and appurtenances thereto belonging or in anywise appertaining:

To have and to hold the said piece or parcel of land and premises together with the appurtenances, to, unto, and to the use of the said party of the second part, his heirs and assigns, forever.

In testimony whereof the president of the said corporation, party of the first part, hath hereunto signed, named, and affixed the corporate seal the day and year first hereinbefore written.

JOHN W. ALVORD,
Pres't F. S. & T. Co.
G. W. STICKNEY, [CORPORATE SEAL.]
Actuary and Secretary.

Signed, sealed, and delivered in the presence of—
N. CALLAN.

164 DISTRICT OF COLUMBIA, *County of Washington*, } ss:

I, Nich. Callan, a notary public in and for the said county and District, do hereby certify that J. W. Alvord, to me known to be president of the board of trustees of the Freedman's Savings and Trust Co., party to a certain deed, hereto annexed, bearing date on the sixteenth day of June, in the year eighteen hundred and seventy-three, and acknowledged said deed to be the act and deed of the Freedman's Savings and Trust Company for the purposes therein expressed.

Given under my hand and notarial seal this sixteenth day of June, A. D. 1873.

N. CALLAN,
Notary Public.

(Recorded on the 17th day of June, 1873, in liber 722, folio 248, of the land records of the District of Columbia.)

165 Mr. TOTTEN: I also file a copy of a lease from Andrew C. Bradley to the Postmaster General, dated June 6th, 1873.

(Paper marked "Exhibit No. 9" and hereto attached.)

166 EXHIBIT No. 9. E. Carusi, Sp'l Auditor.

Lease of Andrew C. Bradley to Postmaster General. Dated June 6, '73.

This indenture, made this sixth day of June, in the year one thousand eight hundred and seventy-three, by and between Andrew C. Bradley, of Washington, D. C., of the first part, and John A. J. Creswell, Postmaster General, for and in behalf of the United States of America, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements to be paid, kept, and performed

by the party of the second part, doth hereby devise and lease unto the said party of the second part those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of "E" street, between 9th and 10th streets, in the city of Washington, in the District of Columbia, and known as house numbered 915 on said "E" street northwest; to have and to hold to the party of the second part for the term of three years from and after the 5th day of June, anno Domini one thousand eight hundred and seventy-three, with the privilege to the said party of the second part of a renewal of the said term for the further period of two years, the said party of the second part yielding and paying therefor the annual rent during the said term, and a subsequent renewal thereof as aforesaid, of four thousand two hundred (4,200) dollars, payable quarterly on the 30th day of September, the 31st day of December, the 31st day of March, and the 30th day of June.

And it is hereby mutually understood and agreed by and between the parties hereto that this lease is made subject to an appropriation by Congress for the payment of the rental herein stipulated for, and that no payment shall be made to said party of the first part on account of such rental until such appropriation shall be available, and that as soon as practicable after such appropriation shall become available the arrears of the rent due shall be paid in full, and thereafter payment shall be made at the times and in the manner hereinbefore stipulated.

And it is hereby agreed by said party of the first part that he will at his own expense remove such partitions and construct such partitions, with necessary doorways and doors, in said building, and construct such water closets, with the necessary water connections, as may be required by the supervising architect of the Treasury Department, and that he will leave in good order all gas fixtures now in said building for the use of the said party of the second part, and the said party of the second part will keep the said premises in good repair during the continuance of this lease and any renewed term thereof, and the expenses of any alterations of or additions to the interior not herein otherwise provided for, so as to adapt it to the use of the United States and not calculated to damage the premises, are to be borne by the party of the second part, and all taxes and assessments legally levied or charged upon the property are to be paid by the party of the first part.

And it is hereby further provided that in case the premises or any part thereof during said term or the renewal thereof be destroyed or injured by fire or other unavoidable casualty, so that the same
167 shall be thereby rendered unfit for use, then the rent hereinbefore reserved, or a just and proportionable part thereof, according to the extent and nature of the injury sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use by and at the expense of the said party of the first part; and the said party of the second part covenants to deliver up said premises to the party of the first part at the determination of this lease or at the end of any renewal of the term thereof in good order and condition, reasonable wear and use thereof and in-

jury by unavoidable fire or other casualty excepted; and it is further stipulated that the party of the second part may, at or before the delivery of the premises aforesaid, remove such additions to or improvements of the same placed on the premises by the party of the second part, the renewal of which, as aforesaid, will not injure the premises, as he, the said party of the second part, may elect so to do.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

A. C. BRADLEY. [SEAL.]
[Departmental Seal.]
JNO. A. J. CRESWELL,
Postmaster General.

Signed, sealed, and delivered in the presence of—
T. A. SPENCE.
A. G. MILLS.

Law Office of Andrew C. Bradley, No. 635 F street. P. O. box 335.

WASHINGTON, D. C., *Nov.* 21, 1874.

Hon. Postmaster General.

SIR: Alexander R. Shepherd, Esq., of this city, has purchased of me the property known as No. 915 E street, Washington, D. C., leased by the Post Office Department, and I, in consideration thereof, hereby assign and transfer unto him the lease thereof, and fully authorize and empower him to collect the rent therefor,

Witness my hand and seal this twenty-first day of November, A. D. 1874.

A. C. BRADLEY. [SEAL.]

Witness:
EWELL A. DICK.

168 Mr. TOTTEN: Also copy of deed from A. C. Bradley and wife to Alexander R. Shepherd, dated Aug. 27, 1874.
(Paper marked "Exhibit No. 10" and hereto attached.)

169 EXHIBIT No. 10. E. Carusi, Sp'l Auditor.

Deed from Andrew C. Bradley and Wife to Alexander R. Shepherd. Dated Aug. 27, 1874.

"Exhibit H."

This indenture, made this twenty-seventh day of August, in the year eighteen hundred and seventy-four, between Andrew C. Bradley and Sue H. Y. Bradley, his wife, of the first part, and Alexander R. Shepherd, of the second part, all of the city of Washington, District of Columbia, witnesseth: That the said parties of the first part, for and in consideration of the sum of eighteen thousand dollars to them paid by the said party of the second part at and before the sealing

and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, and sold, assigned, transferred, conveyed, and confirmed, and do hereby grant, bargain, and sell, assign, transfer, convey, and confirm, unto the said party of the second part, his heirs and assigns, all that certain piece or parcel of land situate and lying in the said city of Washington, known and described as part of lot numbered four (4), in square numbered three hundred and seventy-seven (377), beginning for the same at the southwest corner of said lot and running thence on the line of E street east twenty-four (24) feet; thence north one hundred and fifty-nine (159) feet to an alley; thence west twenty-four (24) feet; thence south one hundred and fifty-nine (159) feet to the place of beginning, together with all and singular the improvements and appurtenances to the same belonging or in anywise appertaining, and all the right, title, interest, and estate of the said parties of the first part in and to the same; to have and to hold the said piece or parcel of land and premises to, unto, and to the use of the said party of the second part, his heirs and assigns, forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

A. C. BRADLEY. [SEAL.]
SUE H. Y. BRADLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
D. R. BELL.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, D. R. Bell, a notary public in and for said District and county, do hereby certify that Andrew C. Bradley and Sue H. Y. Bradley, parties to the deed above written, bearing date the twenty-seventh day of August, in the year eighteen hundred and seventy-four, and to me well known as such, and acknowledged the same, respectively, to be their act and deed; and the said Sue Y. Bradley, being by me examined apart from her husband, acknowledged the same to be her act and deed and declared that she executed the same willingly and wished not to retract it.

Given under my hand and notarial seal this eleventh day of September, A. D. 1874.

D. R. BELL, [SEAL.]
Notary Public.

170 (Recorded on the 11th day of September, 1874, in liber 757, folio 489, of the land records of the District of Columbia.)

171 Mr. TOTTEN: Also copy of deed of trust from Andrew C. Bradley and wife to John W. Alvord and George W. Stickney, dated June 9, 1873.

(Paper marked "Exhibit No. 11" and hereto attached.)

172 EXHIBIT No. 11. E. Carusi, Sp'l Auditor.

Deed of Trust from Andrew C. Bradley & Wife to John W. Alvord and George W. Stickney. Dated June 9, 1873.

This indenture, made this ninth day of June, in the year one thousand eight hundred and seventy-three, between Andrew C. Bradley and Sue H. Bradley, his wife, of the city of Washington, District of Columbia, of the first part, and John W. Alvord and George W. Stickney, of the same place, of the second part:

Whereas the said Andrew C. Bradley stands justly indebted unto the Freedman's Savings and Trust Company in the sum of seventeen thousand dollars, for which amount he hath passed unto the said Freedman's Savings and Trust Company his five promissory notes bearing even date with these presents, for sums of twenty-four hundred dollars ($2,400), twenty-six hundred and fifty dollars ($2,650), twenty-nine hundred dollars ($2,900), thirty-one hundred and fifty dollars ($3,150), and fifty-nine hundred dollars ($5,900), respectively, and payable, respectively, in one, two, three, four, and five years after date, with interest at eight (8) per centum per annum, payable semi-annually, and being desirous to secure the punctual — of said notes when and as the same shall respectively become due and payable, with all interest and costs due and accruing thereon, the said parties of the first part therefore execute these presents.

Now, therefore, this indenture witnesseth that said parties of the first part, for and in consideration of the premises and the sum of one dollar in lawful money of the United States to them in hand paid by the said parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the parties of the second part and the survivors of them, his heirs and assigns, the following-described real estate situated in the city of Washington, District of Columbia, to wit: All that certain piece or parcel of land known and described as part of lot numbered four (4), in square numbered three hundred and seventy-seven (377), beginning for the same at the southwest corner of said lot and running thence on the line of "E" street east twenty-four (24) feet; thence north one hundred and fifty-nine (159) feet to an alley; thence west twenty-four (24) feet, and thence south one hundred and fifty-nine (159) feet to the place of beginning, together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever, either at law or in equity, of the said parties of the first part of, in, and to the said piece or parcel of land and premises; to have and to hold the said piece or parcel of land and premises with the appurte-
173 nances unto and to the use of the said parties of the second part, the survivors of them, his heirs and assigns, in

and upon the trusts nevertheless hereinafter mentioned and none other—that is to say, in trust to permit the said parties, Andrew C. Bradley, his heirs or assigns, to use and occupy the said described premises and the rents, issues, and profits thereof to take, have, and apply to and for their sole use and benefit until default be made in the payment of said notes or any of them or any instalment of interest due thereon or any proper cost, charges, commission, half commission, or expense in and about the same, and upon the full payment of all of said notes and the interest thereon and all other proper costs, charges, commissions, half commissions, and expenses at any time before the sale hereinafter provided for to release and reconvey the said described premises unto the said Andrew C. Bradley, his heirs or assigns, at his or their costs; and upon this further trust, that upon default being made in the payment of the said notes or any of them or any instalment of interest due thereon or any proper cost, charge, commission, half commission, or expense in and about the same, there and at any time thereafter to sell the said piece or parcel of land and premises at public auction in front of the premises after at least twenty days' notice of the time, place, and terms of sale by advertisement in some one or more of the newspapers printed and published in the said city of Washington, which said terms of sale shall be as follows, viz., the amount of indebtedness secured by this deed of trust with expense of sale in cash and the balance at six and twelve months, for which the notes of the purchaser, bearing interest from the day of sale and secured by a deed of trust on the property sold, shall be taken; a deposit of two hundred dollars shall be required of the purchaser at the time of sale, and all conveyancing and revenue stamps shall be at the expense of the purchaser; and upon this further trust, upon full compliance with the terms of sale, to convey the property in fee simple to the purchaser or purchasers thereof, at his, her, or their cost and expense and without any liability to see to the application of the purchase-money, and out of the proceeds of said sale or sales, first to pay all proper costs, charges, and expenses, and to retain as compensation a commission of three per cent. on the amount of said sale or sales; secondly, to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not, and, last, to pay the remainder, if any, to the said Andrew C. Bradley, his heirs or assigns; and the said Andrew C. Bradley doth hereby covenant with the said parties of the second part, the survivor of them, his heirs and assigns, that all taxes upon the said land shall be duly paid, and that the building on said parcel of land shall be kept insured during the continuance of this trust in some good and responsible fire-insurance company or companies to the satisfaction of the parties of the second part, in the sum of twelve thousand dollars for the benefit of the debt hereinbefore described, and the policy or policies of insurance be assigned to the said parties of the second part as trustees under these presents; and, further, that in case the said Andrew C. Bradley, his heirs or assigns, shall fail to pay the taxes or to keep said property so insured, then the taxes may be paid and the property be insured for the amount aforesaid by the legal holder of the notes before

mentioned, and the amount of taxes and premium paid shall be considered a part of the expense of said notes secured hereby, in default of payment of which the said parties of the second part or the survivor of them shall have power to sell said property hereby conveyed as aforesaid, and shall dispose of the proceeds of sale as hereinbefore provided; and it is further agreed that if the property shall be advertised for sale under the provisions of the deed and not sold, then the said trustee shall be entitled to one-half com-
174 missions above provided to be computed on the amount of the debt hereby secured and at such time remaining unpaid.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first above written.

A. C. BRADLEY. [SEAL.]
SUE H. BRADLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM FITCH.

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

I, William Fitch, a notary public in and for the county aforesaid, do hereby certify that Andrew C. Bradley and Sue H. Bradley, his wife, parties to a certain deed bearing date on the ninth day of June, A. D. 1873, and hereto annexed, personally appeared before me in the county aforesaid the said Andrew C. Bradley and Sue H. Bradley, being personally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Sue H. Bradley, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same and that she wished not to retract it.

Given under my hand and notarial seal this ninth day of June, A. D. 1873.

WILLIAM FITCH, [SEAL.]
Notary Public.

(Recorded on the 18th day of June, 1873, in Liber 721, folio 250, of the land records of the District of Columbia.)

175 NATHANIEL WILSON produced and sworn on behalf of the commissioners of the Freedmen's Savings and Trust Company by Mr. TOTTEN:

Q. You are a party defendant to this suit, Mr. Wilson, having been brought in after the cause had been pending for some time, are you?

A. I believe so.

Q. Will you state your connection with this case in reference to the causes in the Court of Claims, and state, in the first place, when you filed the first petition in the Court of Claims.

A. I was employed by Mr. A. R. Shepherd some time in the latter part of 1876 to institute a suit in the Court of Claims for the recovery of rent for the premises described in the petition to the Court of Claims, which is filed herewith. It was filed in the Court of Claims on the 7th day of December, 1876.

176 EXHIBIT No. 12. E. Carusi, Sp'l Auditor.

Petition. Filed December 7, 1876. *J. R.*

United States Court of Claims.

ANDREW C. BRADLEY, to the Use of Alexander R. Shepherd, to the Use of George Taylor, Henry A. Willard, and Samuel Cross, Trustees,
vs.
THE UNITED STATES OF AMERICA. } No. 11,456.

To the honorable the judges of the Court of Claims:

Your petitioners, Andrew C. Bradley and Alexander R. Shepherd and George Taylor, Henry A. Willard, and Samuel Cross, trustees, citizens of the United States residing and domiciled in the city of Washington, District of Columbia, respectfully represent:

1. That heretofore, to wit, on the 6th day of June, in the year 1873, the said Andrew C. Bradley, by his indenture of lease, bearing date the year last aforesaid, whereunto the said Andrew C. Bradley was party of the first part and John A. J. Creswell, Postmaster General, for and on behalf of the United States of America, was party of the second part, for and in consideration of the rents, covenants, and agreements in said lease specified, demised and leased unto the said United States of America those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of E street, between Ninth and Tenth streets, in the city of Wash-
177 ington, in the District of Columbia, and known as house numbered 915 on said E street northwest, for the term of three years from and after the 5th day of June, A. D. 1873, with the privilege to the said United States of a renewal of the said term for the further period of two years, at and for the annual rent during the said term and a subsequent renewal thereof of four thousand two hundred dollars ($4,200), payable quarterly on the 30th day of September, the 31st day of December, the 31st day of March, and the 30th day of June.

That in and by said lease it was understood and agreed that said lease was made subject to an appropriation by Congress for the payment of the rental therein stipulated for, and that no payment should be made to the said Andrew C. Bradley on account of such rental until such appropriation should be available, and that as soon

as practicable after such appropriation should be available the arrears of the rent then due should be paid in full, and thereafter payments should be made at the times and in the manner therein before stipulated.

That in and by said lease it was further understood and agreed that the said Andrew C. Bradley, party of the first part, should, at his own expense, remove such partitions and construct such partitions and necessary doorways and doors in said building, and construct such water closets, with the necessary water connections, as might be required by the supervising architect of the Treasury Department, and would leave in good order all the gas fixtures then in said building, and pay all taxes and assessments legally levied or charged upon said property; all of which said covenants and agreements will fully and at large appear from the original of said lease when produced, a true copy of the same being contained on the 12th page of No. 42 of the miscellaneous documents, House of Representatives, 43d Congress, 1st session, a copy of said document being produced and filed herewith and made a part hereof, and marked A. R. S. Exhibit No. 1.

178 II. That immediately upon the signing and delivery of said lease the premises therein described were taken possession of and occupied for and on behalf of the said United States of America, and from the date when occupation and possession was taken as aforesaid were continuously, until the expiration of said term of three years, and have since continuously been used, occupied, and possessed by the employees of the Post Office Department, under the authority and direction of the Postmaster General of the United States of America, for the benefit of the Government of the United States of America, for the transaction of public business.

III. That all the agreements made and entered into by the said Andrew C. Bradley on his part have been fully and faithfully performed and kept.

IV. That after said lease was signed and delivered, to wit, on the 16th day of December, 1873, the said John A. J. Creswell, Postmaster General as aforesaid, communicated to the Congress of the United States, through the Hon. John A. Garfield, chairman of the Committee on Appropriations of the House of Representatives, the facts showing the exigency of the public service which required the use of said premises for office purposes, and a copy of said lease, as is shown by said miscellaneous document No. 42, already marked A. R. S. Exhibit No. 1 in this case, and which, it is prayed, may be taken and considered as a part of this petition.

V. That said communication having been duly considered, the deficiency bill reported by said Committee on Appropriations, being House bill No. 3030, 43d Congress, 1st session, contained the following provisions:

"For rent of house numbered nine hundred and fifteen E
179 street northwest, for further accommodation of the clerical force of the Department, from June sixth, eighteen hundred and seventy-three, to June thirtieth, eighteen hundred and seventy-four, four thousand four hundred and eighty-eight dollars and eighty-six

cents, and hereafter no contract shall be made for the rent of any building or part of any building in Washington to be used for the purposes of the Government until an appropriation therefor shall have been made in terms by Congress."

VI. That said bill, as reported to the Senate of the United States by the Senate Committee on Appropriations, contained the following provision:

"For rent of house numbered nine hundred and fifteen E street northwest, for further accommodation of the clerical force of the Department, from June sixth, eighteen hundred and seventy-three, to June thirtieth, eighteen hundred and seventy-four, four thousand four hundred and eighty-eight dollars and eighty-six cents, and hereafter no contract shall be made for the rent of any building or part of any building in Washington, not before in use by the Government, to be used for the purposes of the Government until an appropriation therefor shall have been made in terms by Congress."

VII. That by the deficiency bill for the fiscal year 1873–1874, as finally passed by the Congress of the United States, it was enacted that there be appropriated—

"For rent of house numbered nine hundred and fifteen E street northwest, for further accommodation of the clerical force of the Department, from June sixth, eighteen hundred and seventy-three, to June thirtieth, eighteen hundred and seventy-four, four thousand four hundred and eighty-eight dollars and eighty-six cents, and hereafter no contract shall be made for the rent of any building or part of any building in Washington, not now in use by the Government, to be used for the purpose of the Government until an appropriation therefor shall have been made in terms by Congress." (See Stats. at Large, vol. 18, p. 144.)

VIII. That by the act of Congress entitled "An act making
180 appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes," there was appropriated for rent of house numbered nine hundred and fifteen E street northwest four thousand two hundred dollars. (See Stats. at Large, vol. 18, p. 107.)

IX. That accounts for the rent and under the terms and conditions of said lease from June 6th, 1873, to June 6th, 1874, and from June 30th, 1874, to June 30th, 1875, were made out, presented, and duly paid under and by virtue of said acts of Congress, as will appear from the originals of said accounts, copies of which are filed herewith and marked Exhibits A. R. S. Nos. 2 and 3.

X. That by reason of the premises there became due and payable for the rent of said premises for the year ending June 30, 1876, the sum of four thousand two hundred dollars, for the payment of which said amount demand was duly made of the Postmaster General of the United States of America and of the various officers of the United States of whom demand could properly be made, but payment thereof was refused and is still refused, and said sum so due as aforesaid has not been paid nor has any part thereof been paid, notwithstanding said demands.

XI. That considerable sums of money were expended in preparing said premises for the occupation by the employees of the Post Office Department and in the execution and performance of the agreements contained in said lease, and that for the use and occupation of said premises, considering the situation and value thereof and the expenditures made thereon, the said sum of $4,200 per annum was no more than a fair and reasonable compensation.

XII. That at the time said lease was made and executed as
181 aforesaid, on the 16th day of June, 1873, the legal title in and to said premises were vested in the said Andrew C. Bradley, but was held by him to the use and benefit of the said Alexander R. Shepherd, the equitable owner thereof; that afterwards, to wit, on the 24th day of August, 1874, the said Andrew C. Bradley sold and conveyed said premises to the said Alexander R. Shepherd, and on the 21st day of November, 1874, assigned said lease to said Shepherd; and directed all payments of moneys due and to become due under said lease to be made to the said Alexander R. Shepherd, and that afterwards, to wit, on the 15th day November, 1876, the said Alexander R. Shepherd, by his indenture of that date, assigned and transferred all his right and interest in and to this demand and claim to the said George Taylor, Henry A. Willard, and Samuel Cross in trust for the benefit of the creditors of him, the said Alexander R. Shepherd.

XIII. That by reason of the premises there became and is due from the United States of America to the said Andrew C. Bradley to the use and for the benefit of the said Alexander R. Shepherd and the said George Taylor, Henry A. Willard, and Samuel Cross, trustees as aforesaid, the said sum of $4,200, and that the petitioners are justly entitled to said amount after allowing all just credits and offsets.

XIV. That no assignment or transfer of this claim or any part thereof or interest therein has been made except as stated in this petition.

XV. That the petitioners are, each of them, citizens of the United States, and have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States, and that the facts stated in this petition are true.

182 & 183 Wherefore your petitioners pray that judgment may be entered in favor of the said Andrew C. Bradley, to the use and benefit of Alexander R. Shepherd and George Taylor, Henry A. Willard, and Samuel Cross, his trustees as aforesaid, for said sum of four thousand two hundred dollars.

The address of the petitioners is Washington, D. C., and the address of their attorney, Nathaniel Wilson, is No. 635 F street, Washington, D. C.

A. C. BRADLEY.
ALEX. R. SHEPHERD.
GEORGE TAYLOR,
HENRY A. WILLARD,
SAMUEL CROSS,
Trustees.

DISTRICT OF COLUMBIA:

Be it remembered that on this 5th day of December, A. D. 1876, before the subscriber, a United States commissioner for the District aforesaid, personally appeared Andrew C. Bradley, who, being first duly sworn, deposes and says that he has carefully read the foregoing petition by him subscribed and knows the contents thereof, and that the facts therein stated are true to the best of his knowledge and belief.

[SEAL.] HENRY R. ELLIOTT,
U. S. Comm'r for the District of Columbia.

184 EXHIBITS.

A. R. S. EXHIBIT No. 1. Henry R. Elliott, Com'r.

43d Congress, 1st Session. HOUSE OF REPRESENTATIVES. Mis. Doc. No. 42.

Estimates, Vouchers, and Explanations of Deficiency Estimates.

Letter from the Postmaster General to Hon. James A. Garfield, chairman of the Committee on Appropriations, with estimates, vouchers, and explanations of deficiency estimates.

December 17, 1873.—Referred to the Committee on Appropriations and ordered to be printed.

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *December* 16, 1873.

SIR: I have the honor to make the following request, viz:

1st. That to the bill making appropriations out of any money in the Treasury, not otherwise appropriated, for supplying deficiencies for the fiscal year ending June 30, 1874, there be inserted the sum of $5,633.33, being amount required to meet the expense incurred in alterations and improvements to the Post Office building, made necessary by the change of grade of Eighth street (see paper herewith marked A), and the sum of $4,488.46, being amount required for rent of house No. 915 E street northwest, from June 6, 1873, to June 30, 1874.

2d. That the sum of $4,200 be added to the estimate for contingent expenses of the Post Office Department, on page 47 of the Secretary of the Treasury's book of estimates for the fiscal year ending June 30, 1874, for rent of building above mentioned. The papers herewith, marked B, numbered 1 to 14, inclusive, set forth the exigency of the service in requiring the use of the said house for office purposes.

3d. That the sum of $2,101.87, amount due special agents of this Department, be appropriated out of the deficiency in the

185 postal revenue for fiscal year ended June 30, 1872. (See paper herewith, marked C.)

I am, sir, very respectfully, &c.,

JNO. A. J. CRESWELL,
Postmaster General.

Hon. J. A. Garfield, chairman Committee on Appropriations, House of Rep.

Schedule of Papers Accompanying Letter of Postmaster General to Chairman of Committee on Appropriations, House of Representatives.

Letter.	Subject.
A	Report of supervising architect on bill of M. J. Emery & Bros.
B 1	Report on the necessity for more room.
B 2	Schedule of proposals for renting buildings to the Post Office Department.
B 3	Report of the supervising architect on building.
B 4	Report of the chief clerk supervising architect's office and assistant superintendent State Department on buildings.
B 5	Supplemental report of above officers.
B 6	Proposal for rent of premises 1000, 1002, and 1004 F street.
B 7	Proposal for rent of premises 809 E street.
B 8	Proposals for rent of premises 508 Ninth street.
B 9	Proposals for rent of premises 708 E street.
B 10	Proposals for rent of premises 618 F street.
B 11	Proposals for rent of premises 915 E street.
B 12	Proposals for rent of premises 913 E street.
B 13	Proposals for rent of premises (May building) Seventh and E Sts.
B 14	Lease of premises 915 E street.
C	Letter of C. Cochran, Jr., relative to amounts due special agents of the Post Office Department.

A.

Report of Supervising Architect on Bill of M. J. Emery & Bros.

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT, *February* 28, 1873.

SIR: In accordance with your instructions I have examined the bill of Messrs. M. J. Emery & Bros. for alterations and improvements to the Post Office building, rendered necessary by the change of grade of Eighth street, which made said alterations and improvements necessary in order to provide an entrance for the mail wagons to the court-yard of the General Post Office. This work was of a nature that could not be foreseen and provided for.

186 Under these circumstances Messrs. Emery & Bros. agreed to perform the work at the lowest market rates, trusting for

an appropriation to be made by Congress for the amount, which proposition I recommended be accepted in my letter of October 18, ultimo, and the work has been completed.

I find, after careful examination of the vouchers for the work performed by Messrs. Emery & Brothers and the sub-contractors, that they are reasonable and proper and not above market rates, excepting the bill of Messrs. Finegan & Nasdall, all the items of whose bill show excessive, and the bill is, in my opinion, not only exorbitant, but discreditable to the contractors. Their bill amounts to $1,411; but in no event can I recommend the payment of more than $845, which would be a fair and reasonable allowance and would give them full market rates for the labor performed. With this exception the prices, as I hava previously stated, are fair and satisfactory; and I recommend that an appropriation of $5,633.33 be obtained of Congress for the settlement of this claim, which is, in my opinion, reasonable and just.

Very respectfully,

A. B. MULLETT,
Supervising Architect.

Hon. J. A. J. Creswell, Postmaster General.

B 1.

Report of Committee on Post Office Building, 1873.

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *May* 9, 1873.

SIR: The undersigned, designated by you a committee to examine the building now occupied by the Post Office Department and the Sixth Auditor's Bureau of the Treasury Department, in order to ascertain whether it is practicable to obtain sufficient room therein to accommodate the rapidly increasing business of the Department and of the auditor's bureau, beg leave to submit the following report:

The immediate and pressing necessity for increased facilities in transacting the public business arises from the fact that Con-
187 gress at its last session authorized the appointment of fifteen clerks in the sixth auditor's office; and, furthermore, the introduction of the postal-card system. The constant extension of the postal service throughout the country, the increase of the money-order business, together with other work imposed upon the Department by recent Congressional action, render the appointment of at least eight additional clerks absolutely necessary. These twenty-three additional clerks must be provided with room in which to perform their duties; hence the necessity of the examination made pursuant to your instructions.

The increase in the number of post offices in the United States, now numbering over 32,000, has caused a great increase in the labors of the Department, especially in the postage stamp and stamped envelope division of the Third Assistant Postmaster General's office and in the several divisions of the office of the auditor, and it is now found that the parts of the building assigned to these offices are insufficient to afford the room actually necessary to enable the clerks to properly perform their duties. The rooms are crowded, many of the occupants being compelled to have their desks in corners far removed from the light; in some cases clerks engaged in different kinds of work are located in the same room, causing confusion and increasing the liability to errors. In the present building there are no vacant rooms which can be made available for the accommodation of additional clerks. We have, therefore, in accordance with your suggestions, instituted inquiries with the view of ascertaining whether any building or rooms outside of the Department could be secured. The only building in the neighborhood that can be obtained, as far as we are at present informed, is at No. 708 E street, immediately opposite the main entrance to the Department. This building is now being repaired and fitted up by Messrs. A. L. Barber & Co., the present lessees, and it is in every way suitable, and possession can be obtained at any day. It contains some fourteen or fifteen rooms, all of good size, and many of them larger than the rooms in the Post Office building. They are well lighted and ventilated, and in every way suited for offices. There are stationary washstands in each room and water closets on each floor. The lessees will fit up the building in accordance with the wishes of the Department, and will lease it at a rental of $400 per month.

The building is not of sufficient size to accomodate the
188 whole of any bureau of the Department, and as the work of each division of the auditor's office is so intimately connected with the other no part of that office could be moved to a separate building. The same will apply to the postage-stamp division of the Third Assistant Postmaster General's office, which must be retained near the auditor's office; but the topographical division of the Second Assistant Postmaster General's office is somewhat of an independent division and might readily be moved to the new location, which is in every way adapted for its use. The moving of that division would vacate seven rooms in the Post Office building, which would answer the present needs of the two offices.

In submitting this we would suggest that action be taken as speedily as possible, as the room is wanted for immediate use, and the lessees of the building we have inspected are anxious to have the matter concluded, as they are receiving applications daily for the renting of rooms for offices, which, if done, will prevent its being obtained hereafter.

In view of all the circumstances, and especially the impossibility of procuring rooms in the present building for the additional clerical force required, we feel justified in pressing upon your attention the urgent necessity of obtaining the increased accommodations,

either in the manner herein suggested or by adopting some better method, at the earliest practicable moment.

Very respectfully, your obedient servants,

J. J. MARTIN,
Auditor for Post Office Department.
E. W. BARBER,
Third Assistant Postmaster General.
J. M. McGREW,
Chief Clerk Auditor's Office.
WM. M. IRELAND,
Chief Clerk Third Assistant Postmaster General.
A. D. HAZEN,
Principal Clerk Stamp Division.

Hon. John A. J. Creswell, Postmaster General.

189 B 2.

Schedule of Proposals for Renting Buildings to the Post Office Department.

No. of offer.	Premises.	Superficial feet of space available for office purposes.	Annual rent.
(B 6) 1	1000, 1002, and 1004 F street northwest.*	5,962, 1,462 of which is excellent.	$3,600
(B 7) 2	809 E street northwest*	2,961	Not stated.
(B 8) 3	508 Ninth St. northwest*	2,185	2,200 or 2,000
(B 9) 4	708 E street northwest*	2,640	4,200
(B 10) 5	618 F street northwest*	2,545	3,000
(B 11) 6	915 E street northwest*	3,544	4,800
(B 12) 7	913 E street northwest	2,331	1,800
(B 13) 8	May building, corner Seventh and E streets		6,480

* Premises included in report of May 26.

B 3.

Report of the Supervising Architect.

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT, *May* 29, 1873.

SIR: In accordance with your instructions I have caused an examination to be made of the following buildings, viz: 1000, 1002, and 1004 F street, 809 E street, 508 Ninth street, 708 E street, 618 F street, 915 E street, 913 E street, and May building, corner of Seventh and E, with a view to ascertain which of them is best adapted for clerical purposes and which would provide the best accommodations for the portion of your Department for which temporary accommodations are required. The examination was made by

the chief clerk of this office, A. G. Mills, Esq., and the assistant superintendent of the State Department, W. T. Dewdney, Esq., who is an experienced mechanic. I also examined personally such buildings as appeared from their report and from an examination of the exterior to be at all adapted to the wants of the Department.

The property at the corner of F and Tenth streets, being proposition No. 1, is, in my opinion, entirely too remote from your Department, and is in bad condition and undesirable.

Property known as 809 E street, being proposition No. 2, is
190 not specially desirable, and the owner declines to fix any rent unless the Department expresses a willingness to lease the building. Under these circumstances I do not think that any further consideration of these premises is necessary.

Property known as 508 Ninth street, being proposition No. 3, is a good and substantial building, but is not, in my opinion, as desirable as proposition No. 7, which is offered at a lower rent and has a north and south exposure.

Property known as 708 E street, being proposition No. 4, is, in my opinion, entirely unsuitable, there being but six rooms in the building that are adapted for clerical purposes, the basement being entirely unfit for any such purpose. The rent for this building is greatly in excess of that of any other property offered, taking into consideration the amount of accommodations.

Property known as No. 618 F street, being proposition No. 5, is a good building, but possesses no special advantage over proposition No. 3 save a north frontage, while the rent is $1,000 more.

Property known as No. 915 E street, being proposition No. 6, is undoubtedly the best building offered the Department. It is larger and better lighted than any other, and has recently been placed in thorough repair and renovated from top to bottom. It has been occupied ever since its erection by the family of the owner, who was also the builder, and is as clean and well adapted for office purposes as any building that has been used as a dwelling-house can be. The only objection that can be made is the amount of rental, which is, in my opinion, rather high. The agent informs me that the owners are willing to make any alterations or improvements that the Department may desire without extra cost, and I think it probable that they might be induced to reduce the rent. Should the Department desire to rent it some alterations in the interior will be required, the nature of which I have explained to the agent, and have been assured by him that the owners will make the same without charge. I recommend the lease of this property by the Department, provided the terms are or can be made satisfactory to the Department.

The next property is the house adjoining, known as No. 913 E street. This building is as well adapted to the wants of the Department as any offered save the one preceding, but it is considerably smaller and much out of repair, and in need of a thorough
191 renovation, which would be indispensable before occupancy by your Department, and would, as I understand, be charge-

able to the Department. This would be virtually an addition to the rent.

Proposition No. 8 is building known as May's building, and is situated on the corner of Seventh and E streets. The building is not, in my opinion, as desirable as the property known as 915 E street, while the rent is much greater. The fourth story of the building, called by the Doctor in his proposition the third story, is a mere garret, entirely unsuitable for Government purposes. I see no particular advantages in the building save its proximity to the Post Office Department.

In conclusion I have to repeat that 915 E street is the most desirable property offered, and is the only premises offered that is in a fit condition for occupancy; the difference in the rent is not, therefore, as great as it would appear from the difference in the proposals.

Property No. 913 E street is offered at a lower rate than any other, and is in about as good repair as any other building, 915 alone excepted.

I would, therefore, respectfully suggest that the Postmaster examine the two buildings last referred to, when he can readily decide which is best adapted to the wants of his Department and the rental of which is most desirable. I feel assured that these two buildings present the most desirable selection to be obtained in the list. The papers referred to in this communication are herewith transmitted.

Very respectfully, A. B. MULLETT,
Supervising Architect.

Hon. John A. J. Creswell, Postmaster General.

B 4.

Report of the Chief Clerk and Assistant Superintendent State Department on Buildings.

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT, *May* 26, 1873.

SIR: In accordance with your instructions we have exam-
192 ined the different buildings offered for rent to the honorable Postmaster General for the use of the Post Office Department, and transmit the proposals for the same herewith, together with the following report:

Buildings Nos. 1000, 1002, and 1004 F street (No. 1) have a large, well-lighted room, admirably adapted for the use of draughtsmen, over the two stores in buildings 1002 and 1004. This room is 34 by 43 feet, and is now used as a dancing academy. The remainder of the buildings is divided into small, indifferently lighted rooms, containing in the aggregate 4,500 superficial feet of room space. With the exception of the large room specified above, which is in good order, the buildings would require considerable outlay to adapt them to the use of the Department.

Building No. 809 E street (No. 2) is a four-story brick building, with a three-story back building. It contains 2,694 superficial feet

of available room space in the main building, and has nine small rooms, indifferently lighted, in the back building.

Building No. 508 Ninth street (No. 3) is a three-story and attic brick building, with two-story back building. It is an old building. It has in the main building 2,185 feet of room space available for office purposes, and the back building is divided into small rooms which would be of little use as offices.

Building No. 708 E street (No. 4) is a very old building, without back building, the basement of which is now being reconstructed. It contains three rooms well adapted for office purposes, containing 1,072 superficial feet. It contains, in addition, 1,568 feet of room space which would be available for office purposes. It also has three attic rooms and five rooms in the basement, two of which would answer for office purposes. The building is now undergoing repair, and when completed will be provided with a furnace, hot and cold water, and gas. It could be made available for a small division of clerks, but contains less office room than any of the buildings offered.

Building No. 618 F street (No. 5) is a well-constructed four-story brick building, with two-story back building. It contains in the main building 2,220 feet of room space available for office purposes, excepting that the ceiling of the fourth floor is rather low. It also has in the back building a room suitable for an office, containing 325 superficial feet of space; in addition to which the back
193 building contains four small rooms. This building has a good, dry cellar, in which is a furnace which heats the first floor and halls of the main building. It is also well supplied with water, has gas fixtures in every room, and is in perfect order throughout, all the walls and ceilings of all the rooms and halls being either painted or papered. The house is in excellent condition.

Building No. 915 E street (No. 6) is a large, substantially constructed and comparatively new brick building. It has four stories in the main building and three stories in the back building, with cellars under both. The building is now unoccupied, is in thorough repair throughout, and ready for immediate occupancy. It has water pipes on each floor and gas fixtures in every room, and the greater part of the building is heated by a furnace. Superficial feet of available room space for offices in main building, 2,304; in back building, 1,240; in addition to which are bath rooms, water-closets, kitchen, and cellars. The hall is six feet wide, the ceilings high, and the rooms well lighted. This building we consider the best adapted for office purposes, for the reason that the back building is separated from the main building by an area and brick-covered hallway which admits of two rear windows to each floor, thus admitting to the main building more light and air from the rear than either of the other premises which have a back building afford.

We also inclose a proposal of A. L. Barber & Co. to rent the building on Eighth street known as the Waverly House, which offer, Mr. Barber informed us, is withdrawn, as the house has been rented to private parties.

We express no opinion upon the eligibility of the location of these buildings, nor upon the rent asked for the same.

Respectfully submitted,

A. G. MILLS,
Chief Clerk.
W. T. DEWDNEY,
Assistant Superintendent State Department.

194 B 5.

Supplemental Report of the Chief Clerk and Assistant Superintendent, State Department, on Buildings.

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT, *May* 28, 1873.

SIR: Respectfully referring to our report of the 26th instant, we have, in accordance with your instructions, examined building No. 913 E street, which was offered since our report was made, and find that it is a four-story brick building, with no back building, and that it is of ordinary construction, the rear wall being cracked in several places. For want of proper care in building the dampness has extended from the basement to the entrance floor, where it is plainly marked on the walls. The house faces south, and from its situation admits of a free current of air. It contains 2,331 superficial feet of room space suitable for office purposes, except that the ceiling of the fourth floor is low.

Respectfully submitted,

A. G. MILLS, *Chief Clerk.*
WM. T. DEWDNEY,
Assistant Superintendent, State Department.

A. B. Mullett, supervising architect, Treasury Department.

B 6.

Proposal for Rent of Premises Nos. 1000, 1002, *and* 1004 *F Street.*

WASHINGTON, D. C., *May* 23, 1873.

DEAR SIR: The undersigned, proprietors of premises Nos. 1000, 1002, and 1004 F street, offer the same, exclusive of the two stores, to the Post Office Department for a term of three or more years at the annual rental of $3,600.

These premises include two buildings extending from the corner of Tenth street along the line of F street and fronting north about 72 feet.

195 The corner house, No. 1000, including the third story of Nos. 1002 and 1004, with which it communicates, contains nineteen rooms, most of which are large, with high ceilings, well lighted and ventilated.

The second building includes Nos. 1002 and 1004, is entirely disconnected with the corner house except in the third story, and contains a large hall 35 feet deep by 45 feet on F street, with a 20-foot ceiling, and lighted by five high windows fronting north. From this hall two rooms open everaging about 18 feet by 25 feet. There is a large basement room arranged for fuel.

These buildings adjoin but one other only, to wit, on the west, which separates them from the alley. There is considerable yard room, having two outlets, one on Tenth street and the other in the alley on the west.

For further information apply to Dr. W. P. Johnston, No. 1307 F street.

Very respectfully, your obedient servants,

W. P. JOHNSTON, M. D.
C. H. LIEBEROSEAEN.

Hon. J. A. J. Creswell, Postmaster General.

B 7.

Proposal for Rent of Premises No. 809 E Street.

WASHINGTON, D. C., *May* 21, 1873.

SIR: Understanding from what seems reliable authority that your Department is in need of more room to accommodate the clerical force in certain branches of its Department, I take the liberty of calling your attention to a large building owned by me at No. 809 E street between Eighth and Ninth streets northwest.

The building is quite new and is over 27 feet front by 87 or 90 feet deep, is four stories high, with an attic, and contains 22 or 23 rooms in all, five water-closets, and a fine bath-room, and one of the finest operating furnaces in the basement cellar probably in the city, and its convenient location and proximity to the General Post Office building is too obvious to require comment.

Should you be of opinion, after inspection, that the build-
196 ing will suit your purpose the rent can be fixed on a basis satisfactory to all.

I have the honor to be, very respectfully,

F. B. CULVER.

Hon. J. A. J. Creswell, Postmaster General.

B 8.

Proposal for Rent of Premises No. 508 Ninth Street.

WASHINGTON, *May* 26, 1873.

SIR: I hereby offer to the Government for rent my house, No. 508 Ninth street northwest, brick dwelling, four stories high, 26 feet front by 40 feet deep, with back building.

The building was two years ago occupied by the Pension Office, and found to possess all the essential requisites of light, ventilation,

and large rooms for a Government office, and for which I am informed the Government paid twenty-five hundred dollars per year. The property is now estimated at from twenty to twenty-five thousand dollars in value, and I consider that twenty-two hundred dollars per year would be a fair rent, in view of the purpose for which it was to be used, but am willing, if that price is objected to, to take $2,000 per annum for it.

Very respectfully, &c., A. Y. P. GARNETT.

A. B. Mullett, Esq.

TREASURY DEPARTMENT, *May* 26, 1873.

MY DEAR SECRETARY: If Dr. Garnett's house will as well answer your purpose as any other offered and serve the public interest as well I should be personally gratified if it could be selected.

Excuse my troubling you about the matter.

Faithfully yours, FREDERICK A. SAWYER.

Hon. Mr. Creswell.

TREASURY DEPARTMENT, *May* 24, 1873.

MY DEAR Mr. CRESWELL: The bearer, Dr. Garnett, is a
197 personal friend of mine. He has a house he wishes to rent for post-office purposes. If it will answer the ends you have in view I should feel gratified to know that he had succeeded in leasing it to the Government at an equitable rate.

Very respectfully, FREDERICK A. SAWYER.

NOTE.—Dr. Garnett proposes to rent house 508 Ninth street to the Department, at one time occupied by Pension Bureau.

B 9.

Proposal for Rent of Premises No. 708 *E Street.*

WASHINGTON, D. C., *May* 17, 1873.

SIR: Referring to our conversation this morning, allow us to say that we will rent the entire premises No. 708 E street to the United States for five years at the rate of $350 per month, and will complete all the improvements now in progress and make modifications in the same to suit the purposes of the Department, giving sixteen offices and five rooms in complete finish and order, with furnace, hot and cold water, and wash-stands, &c. We will also give the Department the privilege of renewing the rent of said premises for a second period of five years at the rate of $400 per month.

Also, if the Department desires to have a 12-foot French roof put on and completed in good style at any time during the term of rent or lease, we will do the same for an additional price of $50 per month, thus giving three more offices.

We desire an answer to this on or before the 20th instant.

We are, sir, yours very respectfully,

A. L. BARBER & CO.

Hon. J. L. Routt, Second Assistant Postmaster General.

B 10.

Proposal for Rent of Premises No. 618 F Street.

198 SIR: The premises No. 618 F street (square 456) is the centre house and lot of the square immediately east of the east front of the Post Office Department.

The alley entrance to the lot is midway between Seventh and Sixth streets; alley 30 feet wide and paved, and the best alley in the city. On this alley, adjoining (nearly) my premises, are the stables just rented by the Department of the Interior.

The dwelling is four stories, with two-story back building. The basement has new furnace, which heats the parlor and dining-room and passages, and is perfectly dry, paved with brick, with front entrance on F street, and bells, &c.

First story.—Hall, front room (saloon style for parlor), 19 by 40; next room, in rear, is 16 by 30; next room, 20 by 20; next room, 12 by 15 (laundry); next comes the back yard, the width of lot, and 40 feet depth to stables; then the stable, concreted and rat proof, with accommodations complete for two horses, with hydrant and carriage-room for one carriage and buggy, and servant's room above.

Second story.—Two large rooms and one passage room in front building, with one small room, 10 by 12; one bathing-room, &c., 9 by 12, and one large room in rear, with porch between; ornamented grounds on either side.

Third story.—Main building, two large rooms and one passage room.

Fourth story.—Main building, two large rooms and one passage room.

In all there are fourteen available rooms, beside bathing-room, laundry, water-closet, and stationary closets; also water-closet in yard, with hydrant water. Ten of these rooms are large; four of them are average-sized, small rooms.

The water from the house and the surface water is carried off in an underground sewer, with water-trap for all points of discharge of water. No gases from sewer can enter the premises.

Water and gas throughout main and back buildings; stationary wash-stands, &c.; premises newly papered, grained, and painted; chandelier in parlor room, eight burners, glass, and four other burners, and full supply of gas-burners throughout house.

I will rent the premises to the Government for three or more years at $3,000 per year, payable $250 monthly.

199 The premises are one and a half or two minutes' walk from your Department.

Respectfully,

DE WITT C. LAWRENCE,
Of Mason, Fenwick & Lawrence,
Northeast Corner 7th and F Streets.

Hon. Postmaster General.

NOTE.—Paved cellar under whole of the main building.

B 11.

Proposal for Rent of Premises No. 915 E Street.

WASHINGTON, D. C., *May* 22, 1873.

DEAR SIR: I have the honor to submit the following proposition regarding house No. 915 E street: I propose to rent it for five years or ten, if desired, for $400 per month. This house contains twenty-two rooms, has been recently repaired, and is fitted up in elegant style. It is complete in all its appointments. I do not think the Department can obtain as suitable a building in the city for the accommodation of a clerical force. The key is at my office, and I will be glad to show you the premises at any time.

Yours truly, B. H. WARNER.

Hon. John A. J. Creswell, Postmaster General.

B 12.

Proposal for Rent of Premises No. 913 E Street.

WASHINGTON, D. C., *May* 26, 1873.

SIR: I desire to lease to the Government my house, No. 913 E street northwest, for Government use, for the sum of $1,800 per annum.

The house is four stories high, 25 feet front, and 44 feet deep, and contains thirteen rooms.

Very respectfully, MRS. A. SARGENT,
No. 926 E Street Northwest.

Hon. A. B. Mullett, architect, United States Treasury.

200 B 13.

Proposal for Rent of May Building, Seventh and E Streets.

WASHINGTON, D. C., *May* 28, 1873.

SIR: I will rent the three stories in May building (stores not included) for $6,480, or I will rent the second and third stories for $3,000 per annum. In case it is decided to take the second and third stories alone I reserve one of the smaller rooms in the third story for some articles I have stored there.

Very respectfully, JOHN FRED'K MAY.

A. B. Mullett, Esq.

B 14.

Lease of Premises No. 915 E Street.

This indenture, made this 6th day of June, in the year 1873, by and between Andrew C. Bradley, of Washington, D. C., of the first

part, and John A. J. Creswell, Postmaster General, for and in behalf of the United States of America, of the second part, witnesseth:

That said party of the first part, for and in consideration of the rents, covenants, and agreements to be paid, kept, and performed by the party of the second part, doth hereby demise and lease unto the said party of the second part those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of E street between Ninth and Tenth streets, in the city of Washington, in the District of Columbia, and known as house numbered 915 on said E street northwest; to have and to hold to the party of the second part for the term of three years from and after the 5th day of June, anno Domini 1873, with the privilege to the said party of the second part of a renewal of the said term for the further period of two years, the said party of the second part yielding and paying therefor the annual rent during the said term and subsequent renewal thereof as aforesaid of four thousand two hundred dollars ($4,200), payable quarterly, on the 30th day of September, the 31st day of December, the 31st day of March, and on the 30th day of June.

201 And it is hereby mutually understood and agreed by and between the parties hereto that this lease is made subject to an appropriation by Congress for the payment of the rental herein stipulated for, and that no payment shall be made to said party of the first part on account of such rental until such appropriation shall be available, and that as soon as practicable after such appropriation shall become available the arrears of the rent then due shall be paid in full, and thereafter payment shall be made at the times and in the manner hereinbefore stipulated.

And it is hereby agreed by said party of the first part that he will, at his own expense, remove such partitions and construct such partitions with necessary doorways and doors in said building, and construct such water-closets with the necessary water connections as may be required by the supervising architect of the Treasury Department, and that he will leave in good order all gas fixtures now in said building for the use of the said party of the second part; and the party of the second part will keep the said premises in good repair during the continuance of this lease and any renewed term thereof, and the expenses of any alterations of or additions to the interior not herein otherwise provided for so as to adapt it to the use of the United States and not calculated to damage the premises are to be borne by the party of the second part and all taxes and assessments legally levied or charged upon the property are to be paid by the party of the first part.

And it is hereby further provided that in case the premises or any part thereof during said term or the renewal thereof be destroyed or injured by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use, then the rent hereinbefore reserved or a just and proportionable part thereof according to the extent and nature of the injury sustained shall be suspended or abated until the said premises shall have been put in proper condition for use by and at the expense of the said party of the

first part, and the said party of the second part covenants to deliver up the said premises to the party of the first part at the termination of this lease or at the end of any renewal of the term thereof in good order and condition, reasonable wear and use thereof and injury by unavoidable fire or other casualty excepted.

202 And it is further stipulated that the party of the second part may, at or before the delivery of the premises aforesaid, remove such additions to or improvements of the same placed on the premises by the said party of the second part, the removal of which, as aforesaid, will not injure the premises as he, the said party of the second part, may elect so to do.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

A. C. BRADLEY. [SEAL.]
JNO. A. J. CRESWELL, [SEAL.]
Postmaster General.

Signed, sealed, and delivered in presence of—
T. A. SPENCE.
A. G. MILLS.

C.

Letter of C. Cochran, Jr., Relative to Amounts Due to Special Agents

P. O. DEPARTMENT, OFFICE CHIEF OF DIVISION
SPECIAL AGENTS AND MAIL DEPREDATIONS,
WASHINGTON, *December* 5, 1873.

SIR: I beg leave respectfully to represent that a balance of $2,101.87 is due to special agents of this Department for the month of June, 1872, the appropriation of $125,000 for the fiscal year ending June 30, 1872, having been exhausted before the accounts for that month were all brought in, and the auditor for this Department did not feel authorized to pay the amount out of the appropriations for the following year, of which there was a balance left, viz., $1,916.98, almost enough to pay the amount required.

It is therefore desired that an appropriation for the amount above named, $2,101.87, be asked for to discharge the following obligations of the Department to the several special agents named for services actually rendered and unpaid for the month of June, 1872, viz:

J. B. Underwood	$365 50
J. H. Wickizer	237 87
William Maxwell	248 65
J. T. Williams	240 97
W. H. Parker	233 37
203 J. B. Furay	305 27
C. B. Gould	221 87
J. T. Callahan	248 37
	2,101 87

While the Department makes its estimates as nearly as possible for its necessary requirements, there will occasionally be a deficiency or a surplus, as in the years ending June 30, 1872, and June 30, 1873.

Very respectfully, your obedient servant,

C. COCHRAN, JR.,
Chief of Division.

Hon. J. A. J. Cresswell, Postmaster General.

A. R. S. EXHIBITS NOS. 2 AND 3. Henry R. Elliott, Com'r.

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *June* 30, 1874.

To A. C. Bradley, Dr.

To rent of house No. 915 E street N. W. for use of Post Office Department from June 6, 1873, to June 30, 1874 ..... $4,480 86

Act making appropriations to supply deficiencies in the appropriations for the service of the Government for the fiscal years ending June 30, 1873, and 1874.

Received from G. D. Chenoweth, disbursing clerk for the Post Office Department, forty-four hundred and eighty $\frac{86}{100}$ dollars in full for the above account.

(Signed) A. C. BRADLEY.

(Signed duplicates.)
Paid by check No. 1056, dated June 30, 1874.

(Endorsed:) A. C. Bradley, June 30, 1874; rent, $4,480.86. Approved. (Signed) J. W. Marshall, Postmaster General. August 11, 1874.

204 & 205 (Paper produced, offered in evidence, marked "Exhibit No. 12," and hereto attached.)

EXHIBIT No. 12.

UNITED STATES OF AMERICA:

Court of Claims.

WASHINGTON, D. C.

I certify that the foregoing and annexed printed pages, numbered from one to twenty-eight, inclusive, contain a true copy of the original petition (and the exhibits thereto annexed) of Andrew C. Bradley, to the use of Alexander R. Shepherd, to the use of George Taylor, Henry A. Willard, and Samuel Cross, trustees, *vs.* The United States, No. 11456, filed December 7th, 1876, in the Court of Claims.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this 26th day of March, A. D. 1880.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

206 By Mr. TOTTEN:

Q. State, if you please, when you filed the second petition, and if you have a copy of it in your hand.

A. The first petition was for rent due for the year ending June 30th, 1876. On the 21st of December, 1878, I filed another petition for the rent due for the two years ending June 30th, 1877, and June 30th, 1878. I have a copy of that petition, which is herewith offered in evidence.

(Paper marked "Exhibit No. 13" and hereto annexed.)

207 "EXHIBIT No. 13." E. Carusi, Sp'l Auditor. Filed Dec. 21st, 1878. J. R.

United States Court of Claims.

ANDREW C. BRADLEY, to the Use of Alexander R. Shepherd, to the Use of George Taylor, Samuel Cross, and Peter F. Bacon, Trustees,
vs.
THE UNITED STATES OF AMERICA. } No. 11978.

To the honorable the judges of the Court of Claims:

Your petitioners, Andrew C. Bradley and Alex. R. Shepherd, and George Taylor and Peter F. Bacon and Samuel Cross, trustees, citizens of the United States residing and domiciled in the city of Washington, District of Columbia, respectfully represent:

1. That heretofore, to wit, on the 6th day of June, in the
208 year 1873, the said Andrew C. Bradley, by his indenture of lease bearing date the day and year last aforesaid, whereunto the said Andrew C. Bradley was party of the first part and John A. J. Creswell, Postmaster General, for and on behalf of the United States of America, was party of the second part, for and in consideration of the rents, covenants, and agreements in said lease specified, demised and leased unto the said United States of America those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of E street, bet. Ninth and Tenth streets, in the city of Washington, in the District of Columbia, and known as house numbered 915 on said E street northwest, for the term of three years from and after the 5th day of June, A. D. 1873, with the privilege to the said United States of a renewal
209 of the said term for the further period of two years at and for the annual rent, during the said term and a subsequent renewal thereof, of four thousand two hundred dollars ($4,200), payable quarterly on the 30th day of September, the 31st day of December, the 31st day of March, and the 30th day of June.

That in and by said lease it was understood and agreed that said lease was made subject to an appropriation by Congress for the payment of the rental therein stipulated for, and that no payment should be made to the said Andrew C. Bradley on account of such rental

until such appropriation should be available, and that as soon as practicable after such appropriation should become available the arrears of the rent then due should be paid in full, and thereafter payment should be made at the times and in the manner hereinbefore stipulated.

That in and by said lease it was further understood and
210 agreed that the said Andrew C. Bradley, party of the first part, should, at his own expense, remove such partitions and construct such partitions and necessary doorways and doors in said building and construct such water-closets, with the necessary water connections, as might be required by the supervising architect of the Treasury Department, and would leave in good order all the gas fixtures then in said building, and pay all taxes and assessments legally levied or charged upon said property; all of which said covenants and agreements will fully and at large appear from the original of said lease when produced, a true copy of the same being contained on the 12th page of No. 42 of the miscellaneous documents, House of Representatives, 43rd Congress, 1st session.

II. That immediately upon the signing and delivery of said lease the premises therein described were taken possession of and
211 occupied for and on behalf of the said United States of America, and from the date when occupation and possession was taken as aforesaid were continuously until the expiration of said term of three years and until the expiration of said further period and term of two years from and after the expiration of said term of three years and have since been continuously used, occupied, and possessed by the employees of the Post Office Department, under the authority and direction of the Post Master General of the United States of America, for the benefit of the Government of the United States of America, for the transaction of public business, and under the terms and conditions of said lease.

III. That all agreements made and entered — by the said Andrew C. Bradley on his part have been fully and faithfully performed and kept.

212 IV. That after said lease was signed and delivered, to wit, on the 16th day of December, 1873, the said John A. J. Creswell, Postmaster General as aforesaid, communicated to the Congress of the United States, through the Hon. James A. Garfield, chairman of the Committee on Appropriations of the House of Representatives, the facts showing the exigency of the public service which required the use of said premises for office purposes, and a copy of said lease, as is shown by said miscellaneous documents No. 42.

V. That by the deficiency bill for the fiscal year 1873–1874, as finally passed by the Congress of the United States, it was enacted that there be appropriated—

"For rent of house numbered nine hundred and fifteen E street northwest, for further accommodation of the clerical force of the Department, from June 6, eighteen hundred and seventy-three,
213 to June 30th, eighteen hundred and seventy-four, four thousand four hundred and eighty eight-dollars and eighty-six cents; and hereafter no contract shall be made for the rent of any

building or part of any building in Washington not now in use by the Government, to be used for the purpose of the Government, until an appropriation therefor shall have been made in terms by Congress."

VI. That by the act of Congress entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes," there was appropriated for rent of house numbered nine hundred and fifteen E street northwest four thousand two hundred dollars. (See Stats. at Large, vol. 18, p. 107.)

VII. That accounts for the rent and under the terms and conditions of said lease from June 6, 1873, to June 6, 1874, and
214 from June 30th, 1874, to June 30th, 1875, were made out, presented, and duly paid under and by virtue of said acts of Congress.

VIII. That by reason of the premises there became due and payable for the rent of said premises for the year ending June 30th, 1877, the sum of four thousand two hundred dollars, and for the year ending June 30, 1878, the sum of four thousand two hundred dollars, for the payment of which said amount demand was duly made of the Postmaster General of the United States of America and of the various officers of the United States of whom demand could properly be made, but payment thereof was refused and is still refused, and said sum so due as aforesaid has not been paid nor has any part thereof been paid, notwithstanding said demands.

IX. That considerable sums of money were expended in
215 preparing said premises for the occupation by the employees of the Post Office Department and in the execution and performance of the agreements contained in said lease, and that for the use and occupation of said premises, considering the situation and value thereof and the expenditures made thereon, the said sum of $4,200 per annum was no more than a fair and reasonable compensation.

X. That at the time said lease was made and executed as aforesaid, on the 16th day of June, 1873, the legal title in and to said premises was vested in the said Andrew C. Bradley, but was held by him to the use and benefit of the said Alexander R. Shepherd, the equitable owner thereof; that afterwards, to wit, on the 24th day of August, 1874, the said Andrew C. Bradley sold and conveyed the said premises to the said Alexander R. Shepherd, and on
216 the 21st day of November assigned said lease to said Shepherd and directed all payments of money due and to become due under said lease to be made to the said Alexander R. Shepherd; and that afterwards, to wit, on the 15th day of November, 1876, the said Alexander R. Shepherd, by his indenture of that date, assigned and transferred all his right and interest in and to this demand and claim to George Taylor, Henry A. Willard, and Samuel Cross in trust for the benefit of the creditors of him, the said Alex. R. Shepherd, and the said Henry A. Willard declined to accept said trust and to act as such, trustee, and Peter F. Bacon was,

under and in pursuance of the terms of said deed, appointed in his place and stead as trustee, and duly accepted said trust.

XI. That by reason of these premises there became and is due from the United States of America to the said Andrew C.
217 Bradley, to the use and for the benefit of said Alexander R. Shepherd and the said George Taylor, Peter F. Bacon, and Samuel Cross, trustees as aforesaid, the said sum of $8,400.00, and that the petitioners are justly entitled to said amount after allowing all just credits and offsets.

XII. That no assignment or transfer of this claim or any part thereof or interest therein has been made, except as stated in this petition.

XIII. That the petitioners are, each of them, citizens of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States, and that the facts stated in this petition are true.

Wherefore your petitioners pray that judgment may be entered in favor of the said Andrew C. Bradley, to the use and benefit of Alex. R. Shepherd and George Taylor, Peter F. Bacon, and
218 Samuel Cross, his trustees as aforesaid, for said sum of eight thousand four hundred dollars.

The address of the petitioners is Washington, D. C., and the address of their attorney, Nathaniel Wilson, is No. 635 F street, Washington, D. C.

A. C. BRADLEY,
ALEX. R. SHEPHERD,
GEORGE TAYLOR,
SAMUEL CROSS, AND
PETER F. BACON, *Trustees.*

DISTRICT OF COLUMBIA:

Be it remembered that on this 21st day of December, 1878, before the subscriber, a clerk of the supreme court of the District aforesaid, personally appeared Andrew C. Bradley, who, being first duly sworn, deposes and says that he has carefully read the foregoing petition by him subscribed and knows the contents thereof,
219 and that the facts therein stated are true to the best of his knowledge.

[SEAL.]

R. J. MEIGS,
Clerk S. C. D. C.,
Per R. J. MEIGS, JR.,
Ass't Clerk.

220 In the Court of Claims, Washington, D. C.

I certify that the foregoing is a true and complete copy of the petition of Andrew C. Bradley, to the use of Alex. R. Shepherd, to the use of George Taylor, Samuel Cross, and Peter F. Bacon, trustees, *vs.* The United States, No. 11978, filed in the Court of Claims on the 21st day of December, 1878, and that said cause is still pending.

In testimony whereof I hereto set my hand and affix the seal of said Court of Claims this 27th day of March, 1880.

[SEAL.] JOHN RANDOLPH,
Ass't Cl'k C't of Claims.

221 By Mr. TOTTEN:

Q. State, if you please, who employed you to do this professional labor.

A. Mr. Shepherd—A. R. Shepherd, Esq.

Q. What was the result of the first suit?

A. The result of the first suit was a judgment for $1,800.00.

Q. Did you take an appeal to the Supreme Court?

A. I did.

Q. State briefly what the result of it all was.

A. The result of it all was (the suit, you understand, was brought for $4,200.00, the amount specified in the lease that is described in the petition) the Court of Claims rendered a judgment for $1,800.00. On appeal the decision of the Court of Claims was affirmed, giving $1,800.00 instead of the amount we sued for.

222 Q. Did you receive the money on that judgment?

A. I did.

Q. State when you received it.

A. Well, I cannot say (paper handed to witness, and after examination of the same he continued); the 3rd of May, 1879.

By Mr. CARUSI:

Q. You took an appeal from the judgment of the Court of Claims for $1,800 in your favor because it was not $4,200, the sum mentioned in the lease?

A. Yes, sir.

Q. That went upon the ground, did it not, that the rental was subject to the appropriation of Congress?

A. Yes, sir; the Supreme Court, by five to four, maintained the construction given to that lease by the Court of Claims, holding that it was made, by the agreement of the parties, subject to an appropriation distinctly, and that the parties agreed that the lessor

223 should take little or much, as Congress might appropriate. Our ground was that there was no such agreement as that, but that the lease meant that after it had been reported to Congress, and after they had made the appropriation for the first year, that that was a ratification of the lease, and gave the lease full vitality for the rest of the term.

By Mr. TOTTEN:

Q. Where is that money now?

A. In my possession.

Q. How was the draft issued by the Treasury Department—to whose order?

A. It was issued to the order of Andrew C. Bradley, to the use of Alexander R. Shepherd, to the use of the trustees.

Q. His trustees?

A. Yes, sir; Mr. Shepherd's trustees.

By Mr. CARUSI:

Q. What trustees are you alluding to?

A. Shepherd's trustees.

Q. Under his general assignment?

224 A. Yes, sir; Taylor, Bacon, & Cross.

Q. The general assignment for the benefit of the creditors?

A. Yes, sir.

By Mr. TOTTEN:

Q. Did Bradley endorse it?

A. He did.

Q. Did Shepherd endorse it?

A. Yes, sir.

Q. Did the three trustees endorse it?

A. Yes, sir.

Q. And you received the money?

A. Yes, sir.

Q. Where did they endorse it?

A. On the back.

Q. Well, where were they when they endorsed it?

A. Mr. Bacon was at his grocery store; Mr. Taylor was at his office; Mr. Cross—I do not remember where he was; and Mr. Shepherd was at his office, I think; he had an office then on New York ave., I believe.

Q. In your answer you state something about an understanding between Thompson and Shepherd as to the distribution of that $1,800?

225 Yes, sir.

Q. Will you state where that bargain was made, if you know anything about it personally? I want to know where the agreement or understanding was made, and when it was made, between Shepherd and Thompson and you, as to the disposition of this $1,800 as set forth in your answer.

A. I think that to carry out that earlier agreement it was agreed by Mr. Bradley and Mr. Shepherd—I think Mr. Shepherd was at his office when I got their signatures to the draft—got their endorsements to the draft, they remarked that the proceeds of the draft were to be paid to Mr. Thompson, less my fees and charges and less also a commission of 2½ per cent. which Shepherd stated (I remember distinctly) was due to Andrew C. Bradley.

By Mr. CARUSI:

226 Q. Now, Mr. Wilson, you say that that agreement which you have just detailed was to carry out the prior agreement.

By the prior agreement you mean the assignment by Shepherd and Bradley to Thompson?

A. Yes, sir.

By Mr. TOTTEN:

Q. Well, as I understand, then, this subsequent agreement as to the disposition of this $1,800 was made by these men in the way of instructions to you separately and apart?

A. They were made by—I do not know that you could properly say "instructions"—but when I got the draft and presented it to be endorsed they said: "Now, the proceeds of this draft are to be disposed of in a certain way—that is, you are to pay Thompson under the agreement that he has less 2½ per cent., which Mr. Bradley is entitled to receive."

Q. Well, when they stated that they were together?

227 A. I do not think that they were. I do not think that I saw them together at all.

Q. Well, when you presented the draft to Shepherd for endorsement you asked him for instructions?

A. No, sir; I received no instructions. I do not think I needed any. He imposed an additional condition, which was that I should pay 2½ per cent. to Andrew C. Bradley, which was the first that I had heard of any liability to him.

Q. Well, what did he say about the disposition of the rest of it?

A. That was to be paid to Mr. Thompson.

Q. Well, he said so there and then, did he?

A. Yes, sir.

Q. Can you give us his language?

A. No, sir.

Q. How did that matter come up for consideration?

228 A. By my presenting the draft to be endorsed.

Q. Thompson was not there?

A. No, sir.

Q. Well, what did Thompson say when you went to him? (After a pause:) You did not go to Thompson?

A. No, sir; I had no occasion to go to Thompson.

Q. Did Bradley say anything about it?

A. No, sir; except when I got his endorsement; I gave him my check for 2½ per cent.

Q. Did you consult the commissioners of the Freedman's Bank or any one of them?

A. No, sir,

Q. Did they have any knowledge of what was going on?

A. No, sir.

Q. You were notified by somebody that they claimed this money, however?

A. I was notified by somebody that there were proceedings in court and that there was an injunction which would operate

229 against the final distribution of the money. That was the reason I retained it in my possession.

Q. The injunction of March 18th, 1878, was served upon you, was it not?

A. I do not know; I thought it was April; there was an injunction served upon me.

Q. (Handing paper to witness.) I now show you the injunction of March 18th, 1878, and ask you if that was served upon you; and, if so, when?

A. Yes, sir; that was served upon me; I can tell from this endorsement on it—on the 20th of April, 1878.

Q. Were you notified by the commissioners of the Freedman's Bank or by anybody acting for them that you must not pay this money over to anybody?

A. In no way except by this injunction.

Q. Were you notified by me as counsel?

230 A. In no way except that the injunction was to be considered in force.

Q. Now, will you state what took place under the second petiti-n which you filed in the Court of Claims? What proceedings were had under that?

A. The petition was filed and then a bill was prepared for the rent for the two years and presented to the Post Office Department, and was referred to the Treasury for settlement, upon the basis of $1,800 a year rent; it was audited, passed through the various stages of approval, audit, &c., and finally a draft was sent to me for the amount; I think it was some $3,600.

By Mr. CARUSI:

Q. The draft was drawn in the same way as the other?

A. Yes, sir.

Q. Went through the same formalities as to endorsements?

A. Yes, sir.

231 By Mr. TOTTEN: And it is payable in the same way?

A. Yes, sir; and that draft is in my possession still, doing nobody any good.

By Mr. CARUSI:

Q. When you presented this second draft for $3,600 to the respective parties for their indorsement, as you had done with the first draft, were any instructions given to you?

A. I did not present that, because the proceedings in court began, and there were injunctions and orders and rules—a variety of proceedings—and I thought it was quite unnecessary for me to attempt to get the endorsements.

Q. So that the $3,600 draft has never been indorsed?

A. No, sir; it has not.

By Mr. TOTTEN:

Q. And it is still exactly as it was when it came from the Treasury?

A. Just exactly as it was when it came from the Treasury.

232 Q. Well, Mr. Wilson, there is a personal matter that you want to attend to, and that it is your claim for fees. In the absence of Mr. Morris, I ask you the question: What do you claim for fees for professional compensation in the first case?

A. I claim, in my answer, that it was an absurdly small figure, considering the labor that was involved in the case—$250.

Q. What do you claim in the second collection of thirty-five hundred and odd dollars?

A. I do not think I made any claim there.

Q. Well, at what figure do you fix your compensation?

A. I think $100, in addition to my charge of $250, would cover all my claim for professional services; and then there was a charge for costs—printing the record and one thing and another—amounting to, as near as I can tell, *to* $250.

233 Q. The charge for printing the record amounted to $250?

A. Taking the testimony, &c.

Q. In both cases?

A. Yes, sir; in both cases. That included the cost of paying the commissioners and everything.

Q. Is there anything else, Mr. Wilson, you want to state?

A. No, sir; that is all.

Q. Who has in his possession the original of that assignment between Shepherd and Bradley on the one side and Thompson on the other?

A. Well, I suppose Mr. Thompson has.

Q. Have you got it?

A. No, sir; at least I don't think I have.

Q. I refer to the agreement of June 21st, 1877.

A. Yes, sir; I do not think I have it.

Q. An impression seems to have obtained in the mind of the court in one of the arguments in the special term that the

234 commissioners of the Freedman's Savings & Trust Co. had directly or indirectly consented to the distribution of the $1,800 about which I have been asking you. Do you know anything about their having made or given any such consent?

A. No, sir; I do not.

Q. Well, you know that they did not so far as you were concerned?

A. They did not give any consent as to the distribution; the only consent was that the claim should be prosecuted and the money paid to whomever was entitled to it.

Q. Mr. Wilson, there is a deed of trust mentioned in that assignment from Shepherd and Bradley to Thompson of June 21st, 1877. Will you state what has become of the security described in that deed of trust—has the property been sold by virtue of the trust?

235 A. Oh, some of it has and some of it is unsold.

Q. How much of it was sold?

A. Well, I can't say; there were a great many lots and it was a very complicated thing.

Q. Who was the trustee?

A. William Thompson was the trustee.

By Mr. CARUSI:

Q. What deed of trust is that?

A. That is a deed of trust executed March 10th, 1873, and recorded in Liber No. 712, folio, 128, of the land records of the District of Columbia.

Q. To secure an indebtedness from Shepherd to Thompson?

A. Yes, sir.

Q. To Mr. John W. Thompson?

A. Yes, sir; William Thompson is the trustee.

Q. Have any of those lots been released, to your knowledge?

A. I do not know; I have not any knowledge at all, sir.

(Cross-examination waived by Mr. Morris.)

E. CARUSI,
Sp'l Auditor.

236 JOHN W. THOMPSON produced and sworn on behalf of the commissioners F. S. & T. Co.

By Mr. LEIPOLD:

Q. Mr. Thompson, did you intervene in this cause for the purpose of securing the rents which were in the hands of Mr. Wilson as having been derived from the property described in the proceedings—No. 915 E street?

A. I did.

Q. What is the basis of your claim for those rents?

A. The basis of my claim is Mr. Shepherd's indebtedness to me.

Q. You mean the indebtedness referred to in a certain assignment, I suppose?

A. Yes, sir; a certain deed of trust or assignment, if you please; the assignment and deed of trust are both together.

Mr. MORRIS: Have you that assignment here?

A. Yes, sir.

237 (Witness here produced the original assignment referred to, and it is compared by the referee with the copy filed in this cause and the latter found correct.)

By Mr. LEIPOLD:

Q. What particular claim did you understand was referred to in this assignment of Shepherd and Bradley to you?

A. There could have been but one claim, and that was the indebtedness in relation to square No. 164. The face of the paper shows where the claim came in.

Q. No; it speaks of a claim and a demand of A. C. Bradley. Did you have any direct connection with obtaining this assignment from Mr. Shepherd and Mr. Bradley?

A. Personally? There is no doubt that I made an effort to get it, expecting to make something out of it. Without that effort, as a matter of course, it would not have been given.

238 Q. In your efforts to procure this assignment what particular claim did you understand was referred to in this assignment—the claim of A. C. Bradley; what claim was it?

A. The rents that were coming to them from the E street property—the rents that they were entitled to.

Q. At that time?

A. All the rents, as it is specified in the agreement. The agreement specifies all the rents.

Q. Did you not understand that it referred to the rents then being due?

A. The rents that were past due and to become due—that they were entitled to.

Q. Was there anything said about it to you by either Mr. Shepherd or Mr. Bradley at the time this assignment was placed in your possession?

A. I have no recollection of any conversation taking place in relation to it. If there was it has transpired so long ago that
239 I do not recollect it. I looked at the paper to refresh my memory so far as I could, and it refreshed me as to that, but not as to any conversation.

Q. But as far as the subsequent rents were concerned you infer that from the paper?

A. No, sir; it was an established fact that I was to receive the rents already due and to become due.

Q. Well, how was that fact established?

A. By the paper.

Q. You say you cannot remember any conversations?

A. No, sir; but whatever the agreement stipulates that, I judge, was right, because whatever conversations were had about it were referred to in the paper, and the paper was drawn up complete.

Q. With reference to this deed of trust that is mentioned in this assignment—have you ever realized from the property described in that deed of trust?

240 A. Nothing since the date of this paper. I would liked to have realized more, but as yet I have not got anything.

Q. Has any of the property mentioned in that deed of trust been disposed of or sold?

A. Yes, sir; but I have never received any of the proceeds.

Q. Where are the proceeds?

A. They are in litigation now.

Q. Can you state what they amount to?

A. They amount to $5,000.00.

Q. Well, they are in litigation how—between whom?

Mr. WILSON: It is involved in the case of Fugitt *v.* Johnson.

By Mr. LEIPOLD:

Q. Has all of the property mentioned in the deed of trust been sold? (After a pause:) This deed of trust is a deed of trust to William Thompson. Now, I want to know whether the property de-

scribed in that deed of trust has all been sold under this deed of trust?

241 A. No, sir; there has not been a dollar of it sold under the trust. I have not sold any of it. I would have sold it, however, if I had not been stopped.

Q. In this suit that you refer to?

A. In this suit that I refer to; yes, sir; I was stopped.

Q. Can you tell what the property is composed of or what it consists of?

A. Improvements and buildings in land.

By Mr. CARUSI:

Q. In the District?

A. Yes, sir; in square 164.

Q. Mr. Thompson, how much rent had accrued to you from the United States at the time of this agreement between Shepherd and Bradley?

A. That I could not tell you. I have no conception precisely how it stood at that time. I have not charged my memory with it; the lease will probably show.

Q. Well, the lease calls for $4,200 per annum and it turned

242 out to be $1,800.

A. Yes, sir.

By Mr. LEIPOLD:

Q. I want to ask you whether all the property mentioned in this deed of trust to William Thompson is in the suit of Fugitt *v.* Johnson?

A. No, sir; there was a great portion of it released.

Q. How much of it?

A. I cannot tell you the number of lots; it is very complicated; it was divided and subdivided, but it can be easily ascertained.

Q. How did you come to release that?

A. By the receipt of money paid me; some of it was released without money.

Q. And that money which was paid to you was applied to the payment of the indebtedness from Mr. Shepherd?

A. Yes, sir.

Q. How much of it did you release without any payment?

A. That I could not tell you now.

243 Q. Could you furnish a statement of the property that has been released?

A. I cannot now; I could not without a good deal of trouble. I shall, perhaps, have to refer to the records and get an abstract of it.

Q. Didn't you keep a memorandum of that?

A. I had two abstracts drawn, but I haven't them now; they can be gotten hold of, however; Mr. Garnett has it, I think, here, and I think Mr. Merrick has got it—either the abstract or the lots that were released.

Cross-examination by Mr. MORRIS:

Q. Mr. Thompson, have you the original notes evidencing the indebtedness mentioned in the deed of trust to William Thompson?

A. I have, sir.

Mr. CARUSI: That is the indebtedness which was intended to be further secured by this agreement?

244 Mr. MORRIS: Yes, sir. (To witness:) You may state whether that was the indebtedness intended to be secured by this agreement.

A. Yes, sir.

(Witness here produces the papers.)

Q. Are those notes the notes of Mr. Shepherd?

A. Yes, sir.

Q. The signatures are those of Mr. Shepherd?

A. The signatures are Mr. Shepherd's.

Q. I notice some endorsements on the back. Do those endorsements show all the payments that have been made on account of these notes?

A. Yes, sir; principal and interest.

Q. And the rest of the notes, except what is shown here, still remain unpaid?

A. The rest of the notes, except as shown here, still remain unpaid.

(Counsel for John W. Thompson here offers in evidence the notes in question, and, by consent, copies of them are filed and
245 the originals withdrawn. Said copies are admitted to be correct, and are marked, respectively, "Exhibit No. 14" and "Exhibit No. 15" and hereto attached.)

246 "EXHIBIT No. 14."

$7,000.00. WASHINGTON, D. C., *March 10th*, 1873.

Two years after date I promise to pay to the order of John W. Thompson seven thousand dollars, value received, with interest at rate of eight per cent. per annum, payable semi-annually.

ALEX. R. SHEPHERD.

No. —. Due ——.
Secured by deed of trust.

True copy.

E. CARUSI,
Sp'l Auditor.

(Endorsed on the back:) 6528. "Alex. R. Shepherd. $7,000. 1873." Paid 16 Sept. Paid July 1, 1874. Paid Nov. 14, '74. 1875, note due 10 March, $7,000; int. due to 10 March, $284.66. J. W. Thompson. Paid two thousand dollars on acc't, principal, Nov. 14, 1874. Paid five hundred & fifty dollars Jan'y 27, 1875 ($550). Paid one thousand dollars June 22, 1875. (See deposit book.)

247 EXHIBIT No. 15.

$8,000.00. WASHINGTON, D. C., *Mar.* 10, '73.

Three years after date I promise to pay to the order of John W. Thompson eight thousand dollars, value received, with interest at rate of eight per cent. per annum, payable semi-annually.

ALEX. R. SHEPHERD.

No. —. Due ——.

Secured by deed of trust.

(True copy.)

E. CARUSI, *Sp'l Aud.*

(Endorsed on the back of note:) 6529. Alex. R. Shepherd. 8,000. 1873. Paid 16 Sep. Paid July 1, '74. Paid Nov. 14, '74. Int. due 10 March, 1875, 320. Int. due 10 Sep., 1875, 320. Note due 10 M'ch, 1876, 8,000; int. due 10 M'ch, 1876, 325.33—$8,325.33. J. W. Thompson, Paid three hundred and twenty dollars, int. for Sep., 1875; paid Sep. 10, 1875. M'ch, 1875, int. not paid.

248 By Mr. MORRIS:

Q. Who drew up this original agreement, Mr. Thompson?

A. I have no recollection of that at all, sir; the writing is that of one of our clerks at the bank.

Q. Were any of the lots that you mentioned as having been released from the trust mentioned there released subsequent to the making of that assignment?

A. No, sir.

Q. Mr. Thompson, you have been asked as to what you understand by the demand or claim of Mr. Bradley and Mr. Shepherd and so on, as stated here in this assignment; explain a little more fully. State what was understood—what was the meaning of that claim and demand, as you understood it.

A. That I was to receive all the rents that were due and to become due.

Q. Until what time—how long were you to receive them?

249 A. I suppose until the indebtedness was paid up.

Q. By "the indebtedness" you mean this balance of $10,000—these notes?

A. Yes, sir.

Redirect examination by Mr. LEIPOLD:

Q. Mr. Thompson, did you know at the time this assignment was executed of the claim that the Freedman's Savings and Trust Company had upon that property?

A. No, sir; I was under the impression that it was Mr. Shepherd's property and that the difficulty was between him and Congress, Congress refusing to give him the $4,200 for rent, they having reduced the rent to $1,800.

Q. When did you first become aware of the claim of the Freedman's Savings and Trust Company? By "claim" I mean their deed of trust upon the property.

250 A. Well, that I cannot say; casually, in the way of business, it may have come to me without making any note of it, and it was a surprise to me, though; but when it was I do not know.

Q. Did you ever have any conversation with either of the commissioners in reference to your claim of the rents accruing from that property?

A. I have no recollection of it whatever, because it was a matter in which I still retained the impression that the property was Mr. Shepherd's.

Recross-examination by Mr. MORRIS:

Q. I suppose you have not received anything yet under this assignment?

A. Nothing.

Adjourned until further notice.

EUGENE CARUSI,
Sp'l Auditor.

251 WASHINGTON, D. C., TUESDAY, *April 6th*, 1880.

Met pursuant to notice.

Present: Messrs. Carusi, Morris, and Leipold.

ANDREW C. BRADLEY produced and sworn on behalf of the commissioners of the Freedman's Savings and Trust Company.

By Mr. LEIPOLD:

Q. Please state your name and business.

A. My name is Andrew C. Bradley; I am a lawyer.

Q. What relation have you to this case?

A. I was one of the solicitors who filed the bill, I believe, and subsequently I was appointed receiver in the case; the date of the order I forget—some time last year; it is in the papers.

252 Q. Have you brought an account with you showing the amount of rents collected by you as receiver and what expenditures you have incurred in connection with the matter?

A. I have brought with me a statement of the rents collected by me as receiver, being for the period of 7 months, at $125 a month, and amounting to the sum of $875. I have made no disbursements whatever, and this is all that I have received in money or otherwise.

(Witness here produces paper.)

By Mr. CARUSI:

Q. Have you credited yourself with your commissions as receiver?

A. I have not.

Q. This fund, then, is still in your hands?
A. It is still in my hands.

(The statement of the account of Mr. Bradley as receiver is here offered in evidence, marked "Exhibit No. 16," and hereto annexed.)

253 EXHIBIT No. 16.

SHEPHERD
v.
FREEDMAN'S SAVINGS & TRUST CO. } Eq. No. 5723.

Statement Rents of No. 915 E. St. N. W., Washington, D.C., Collected by A. C. Bradley, Receiver.

Rent for month of July, 1879	$125
" " " " Aug., "	125
" " " " Sept., "	125
" " " " Oct., "	125
" " " " Nov., "	125
" " " " Dec., "	125
" " " " Jan., 1880	125
	$875

E. CARUSI, *Sp'l Auditor.*

254 By Mr. LEIPOLD:

Q. Mr. Bradley, were you present when Mr. John W. Thompson gave his testimony in this case?
A. I was.
Q. You heard his statement, then, with reference to his understanding as to the rents alluded to in the assignment from yourself and Mr. Shepherd to him?
A. I did.
Q. What was your understanding at the time that that assignment was given as to the rents actually included in the assignment?

(Question objected to by counsel for Mr. Thompson as incompetent, on the ground that it seeks to vary a written instrument by parole evidence.)

A. I was requested by Mr. Nathaniel Wilson, as I recollect it, to execute this assignment. I was already a party to the petition filed in the Court of Claims in behalf of Alexander R. Shepherd
255 and others to collect from the United States the sum of $4,200 rent of house No. 915 E St. N. W. for the year which had accrued. I forget what year it was, but it was the third year's rent under this lease which has been referred to in the testimony here. As I remember it, the petition was originally filed in my name to the use of Alexander R. Shepherd, and that subsequently Mr. Wilson amended the petition by making Mr. Shepherd's trustees (Cross, Taylor, and Bacon) parties, and long after the claim was filed, but before another year's rent had accrued, I was requested to execute this

assignment as an assignment of the claim then pending before the Court of Claims, and I did so. Of course, my understanding under all these circumstances was that it was an assignment of that claim only.

Q. Did you have any conversation with Mr. Wilson or Mr.
256 John W. Thompson on that particular subject?

(Objection repeated by Mr. Morris.)

A. I think I had, but I do not recollect what it was. I would like to state in addition to what I have already stated that this assignment could not possibly cover anything else than the claim then pending in the Court of Claims, for this reason, that it was the only year's rent then overdue and unpaid; no other year's rent had accrued; it was the only "claim and demand of Andrew C. Bradley to the use of Alexander R. Shepherd, to the use of George Taylor, Samuel Cross, and Peter F. Bacon" then pending. When the property was originally leased to the Post Office Department it was done in my name, although I was acting for Mr. Shepherd and as his agent, and I collected the rent which accrued up to November 21st,
257 1874. The rent was payable quarterly, I think, under the lease; the last payment was in June, 1874. In August, 1874, I conveyed this property to Mr. Shepherd by deed, and on November 21st, 1874, I directed a communication to the Postmaster General stating this fact, and that Mr. Shepherd was authorized to collect the rents, and therefore I had nothing in the world to do with the collection of rents. The rent was all collected by Mr. Shepherd in his own name. In fact, all the rent which I have collected as receiver embraced by the statement that has been submitted by me was payable to Alexander R. Shepherd. The trustees—Cross, Bacon, and Taylor—were not known, apparently, at the Post Office Department at all, and these trustees had no interest whatever in these rents under the deed from Alexander R. Shepherd to them. The deed is dated November 15th, 1876, and recorded in Liber
258 839, folio 226, of the land records, and I refer to it as substantiating my statement, and under that deed of trust Alexander R. Shepherd, until default and sale made under this deed of trust, was entitled to receive and collect all rents of property embraced in it, and his trustees had no interest or control whatever in or over the rents which accrued to the property embraced in this deed of trust; and therefore I say that the fact that this claim was filed in my name, to the use of Shepherd, to the use of his trustees, and that that was the only "claim and demand" in my name to the use of Shepherd and to the use of his trustees, to me, beyond all peradventure, fixes the fact that this assignment covered that claim and that only.

Mr. BRADLEY:

Q. Something has been said in this case or during the testimony that has been taken in this cause about the consent of the
259 commissioners of the Freedman's Savings and Trust Co. to the endorsement of the draft for $1,800 which Mr. Wilson pro-

cured from the Treasury Department in payment of the judgment in this suit that you have referred to, and their having consented to the money being paid to Mr. Thompson; what do you know about that?

A. Well, I do not know of their having consented to that endorsement. Before this draft was endorsed by me and by Mr. Shepherd I had a conversation with Col. Totten and it seems that there was a misunderstanding between him and me. I thought Colonel Totten consented that that $1,800 should be paid over under this assignment, but I saw him a day or two afterwards and he said that I had misunderstood him and that he did not consent to that; and the conversation that I had with Colonel Totten in the matter oc-
260 curred about the time of the appointment of a receiver. I do not remember what it was, but that was my understanding of it at the time; it seems that there was a misunderstanding between me and Col. Totten.

Cross-examination by Mr. MORRIS:

Q. Were you present, Mr. Bradley, when Mr. Shepherd signed the assignment?

A. No, sir.

Q. Then I presume you know nothing about what his understanding was?

A. No, sir; I do not; I did not see Mr. Thompson either at that time or for some time afterwards.

February 8, 1881.

(Signed) A. C. BRADLEY.

E. CARUSI, *Sp'l Auditor.*

(The commissioners of the Freedman's Savings and Trust Co. here rest their case.)

261 (Mr. Morris states that he has no evidence to offer.)

Adjourned until further notice.

E. CARUSI, *Sp'l Auditor.*

Filed Feb. 10, 1881.

R. J. MEIGS, *Clerk.*

262 *Motion for Order for Process Against Compl'ts, the Defendants in the Cross-Bill. Filed Feb.* 26, 1881. *R. J. Meigs, Clerk.*

Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
v.
JOHN A. J. CRESWELL *et al.* } Eq. No. 5723.

The clerk will issue a subpœna to each of the complainants in the original bill as prayed in the cross-bill of the defendants.

ENOCH TOTTEN,
For Defendants.

263 In the Supreme Court of the District of Columbia. Feb. 26th, 1881.

A. R. SHEPHERD *et al.*, Comp.,
vs.
F. S. & T. Co. *et al.*, Def. } No. 5723, Doc. 17.

The President of the United States to Alex. R. Shepherd, George Taylor, Samuel Cross, and Peter F. Bacon, defendant-.

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the cross-bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, *Ass't Clerk*.

Endorsed: Not to be found—Alex. R. Shepherd—March 5, 1881. Summoned all the others. Fred. Douglass, marshal. Seal.

264 In the Supreme Court of the District of Columbia. Feb. 26, 1881.

A. R. SHEPHERD *et al.*, Comp.,
vs.
F. S. & T. Co. *et al.*, Def. } Eq. No. 5723, Doc. 17.

The President of the United States to Alexander R. Shepherd, defendant.

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the cross-bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't Cl'k*.

265 *Petition of Commissioners F. S. & T. Co. for Order Directing Shepherd to Answer Cross-Bill, &c. Filed Mar.* 5, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *et al.*
v.
F. S. & T. Co. *et al.* } Equity No. 5723.

John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, respectfully show to the court by this their petition—

That the cross-bill in the cause was filed on the 25th day of Oct., 1877, but that, because of an oversight, no writs were issued until

the 26th day of February, 1881, and that the writ thereon
266 issued has been returned by the marshall of the District endorsed "not to be found" as to the said Alexander R. Shepherd, but the same has been or can be served as to the other defendants in the cross-bill, being the trustees of said Shepherd.

They show that on the 10th day of May, 1879, a decree was passed by this court appointing Andrew C. Bradley receiver in this cause to collect the rents of the property involved in the case, which decree was made, with the consent of the said Alexander R. Shepherd, *made* in open court.

Your petitioners, therefore, pray—

That an order may be passed upon the said Shepherd directing him to answer the cross-bill in this cause within a time to be limited by the order of this court, and that the proceedings relative to the dispositions of the fund now in the hands of the receiver
267 and in the hands of Nathaniel Wilson, one of the parties brought into the cause, be stayed until the proceedings be perfected as to the said Alexander R. Shepherd and his said trustees.

And your petitioners further pray that they may have such other and further relief as their case may require and as may be agreeable to equity and good conscience.

ENOCH TOTTEN,
Sol'r for Com'rs F. S. & T. Co.

268 *Separate Answer of George W. Stickney to Cross-Bill of Com'rs F. S. & T. Co. Filed Mar.* 11, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
v.
F. S. & T. Co., GEORGE W. STICKNEY *et al.* } Equity No. 5723.

The separate answer of George *of* Stickney to the cross-bill of the commissioners of the Freedman's Savings and Trust Company respectfully shows as follows, to wit :

1. He admits the averments contained in the said cross-bill and consents to the relief therein prayed for.

2. The said defendant, John W. Alvord, departed this life
269 in the early part of the year 1879, as this respondent is informed and believes.

GEO. W. STICKNEY.

DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

George W. Stickney, being first duly sworn, doth depose and on his oath say that he is one of the defendants in the above-entitled cause, and that he has read the foregoing answer to the cross-bill of the commissioners of the Freedman's Savings and Trust Company by him subscribed and knows the contents thereof, and that the averments therein contained are true of his own knowledge.

GEO. W. STICKNEY.

Subscribed and sworn to before me this 11 day of March, 1881.
R. J. MEIGS, *C'k*,
R. J. MEIGS, JR.,
Ass't C'k.

270 *Suggestion that John J. Knox Has Been App'd & Has Qualified as Com'r F. S. & T. Co. Filed Mar.* 11, 1881. *R. J. Meigs, Clerk.*

District of Columbia, Supreme Court.

ALEX R. SHEPHERD
vs.
GEORGE W. STICKNEY, COM'R- F. S. & T. Co., *et al.* } Eq., 5723.

And now comes John J. Knox, Comptroller of the Currency of the United States, and shows the court that by virtue of the act of Congress approved Feb. 21, 1881, the Secretary of the U. S. Treasury, on the 7th day of March, 1881, appointed him commissioner of the Freedman's Savings and Trust Company, and that he did on that day qualify as such commissioner, and that he is there-
271 fore entitled to be made a party to this cause instead of the said John A. J. Creswell *et al.*, former commissioners, and he prays an order *acknowledgingly.*

JOHN J. KNOX,
By ENOCH TOTTEN, *Att'y.*

272 *Motion for Order of Publication as to Compl't Shepherd to Answer Cross-Bill. Filed March* 11, 1881. *R. J. Meigs, Clerk.*

Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
vs.
COM'RS F. S. & T. Co. *et al.* } Equity 5723.

And now comes John J. Knox, Comptroller, &c., commissioners of the F. S. & T. Co., and shows the court that the writ of subpœna issued out of the clerk's office on the cross-bill of the com'rs of the F. S. & T. Co., directed to the complainant, Alexander R. Shepherd, has been returned by the marshal endorsed "not to be found," and that said Alexander R. Shepherd is a non-resident and residing in the Republic of Mexico.
273 He therefore prays that an order of publication against said Shepherd may be made by the court according to the statute in such case made and provided.

JOHN J. KNOX, *Com'r,*
By ENOCH TOTTEN,
Sol'r for Com'r.

274 *Petition of J. W. Thompson to Withdraw Former Petition Filed in this Cause. Filed Apr.* 13, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*, Comp.,
vs.
THE FREEDSMAN'S SAVINGS AND TRUST CO. *et al.*, Def.
} Eq. No. 5723, Doc. 17.

John W. Thompson, who has intervened by petition in the above-entitled cause, comes and shows to the court that, as he is advised, he cannot have full and adequate relief in said cause in view of the objects thereof and of the condition of the pleadings therein, and can have such relief only by a new and separate bill, and therefore he asks leave to withdraw his said petition in this cause, and to be allowed to file a new and separate bill.

JOHN W. THOMPSON,
By M. F. MORRIS, *His Solicitor.*

275 *Order Substituting J. J. Knox, Comp'r, as Defendant in Lieu of Creswell et al. Filed May* 3, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

A. R. SHEPHERD
v.
F. S. & T. Co. *et al.*
} Equity No. 5723.

And now comes the solicitor of the Treasury, represented by Enoch Totten, Esq., and suggests the appointment of John J. Knox, Comptroller of the Currency, as commissioner in lieu of the said John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, and asks due entry of the change on the docket of the court in the above-entitled cause.

And, upon said motion, it is, this 3 day of May, 1881, ordered that the said entry as prayed for be made upon the docket of the court.

By the court:

A. WYLIE.

276 *Motion for Order Referring Cause Back to Sp'l Aud. and to Require Compl't Shepherd to Answer Cross-Bill. Filed May* 10, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
v.
THE COM'R F. S. & T. Co. *et al.*
} Equity No. 5723.

And now comes the defendant, The Commissioner of the Freedman's Savings and Trust Company, and moves the court for an order again

referring this cause to the special auditor, Eugene Carusi, Esq., in order that the complainant Shepherd or any other party may have an opportunity to adduce such testimony as he or they may be advised, and that he or they may be heard by the said special auditor touching the proper distribution of the fund mentioned and
277 described in the said special auditor's report heretofore filed, and also that the said complainant Shepherd be required by the order of this court to forthwith file his answer to the cross-bill, he having appeared by counsel in the case in response to said cross-bill.

ENOCH TOTTEN,
For Com'rs F. S. & T. Co.

278 *Order Requiring the Complainant to Answer Cross-Bill. Filed May* 10, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
v.
FREEDMAN'S S. & TRUST COMPANY *et al.* } Eq., 5723.

On motion of Enoch Totten, representing the commissioners of the Freedman's Savings and Trust Company, it is, this 10th day of May, 1881, ordered that the complainant, Alexander R. Shepherd, plead, answer, or demur to the cross-bill of the com'rs of the said trust company and commissioners within thirty days from this date.

By the court:

A. WYLIE.

We consent to the above.

W. F. MATTINGLY,
A. C. BRADLEY,
Compl't's Sol'rs.
ENOCH TOTTEN,
For Comm'rs.

279 *Filed May* 27, 1881. *R. J. Meigs, Clerk.*

Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
vs.
THE COM'RS OF THE FREEDMAN'S SAVINGS & TRUST COMPANY *et al.* } No. 5723, Eq. Doc. 17.

The demurrer of Alexander R. Shepherd, Samuel Cross, George Taylor, and Peter F. Bacon, defendants, to the cross-bill of John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, plaintiffs in said cross-bill.

These defendants, by protestation, not confessing all or any of the matters and things in the said plaintiffs' cross-bill contained to be

true in manner and form as the same is therein set forth and alleged, do demur to said bill, and for cause of demurrer show—

280 That the said cross-bill is filed for an entirely different purpose from the original bill. The subject-matter does not touch the matters in question in the original bill, but it is entirely different therefrom and introduces new matter.

That the said cross-bill shows that Andrew C. Bradley is interested in its subject-matter and in the relief sought, and that he would be a necessary party in an original bill seeking the same relief, but said Bradley is not a party to said cross-bill.

That the said cross-bill does not contain any matter of equity whereon this court can ground any decree or give to the plaintiffs therein any relief against these defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the said defendants do demur thereto and humbly demand the judgment of this court whether they shall be

281 compelled to make any other or further answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol's for Def'ts.

We do hereby certify that, in our opinion, the above demurrer is well founded in point of law.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol's for Def'ts.

DISTRICT OF COLUMBIA, *ss:*

I, Andrew C. Bradley, upon oath, say that I am an attorney-in-fact for the said Alexander R. Shepherd, who is now absent from the United States, living in the Republic of Mexico, and have full power to act for him in this behalf, and that the above demurrer is not interposed for delay, but solely for the purpose of expediting this cause.

A. C. BRADLEY.

282 Subscribed and sworn to before me this 27th day of May, 1881.

R. J. MEIGS, *Clerk,*
By M. A. CLANCEY, *Ass't Clerk.*

283 *Order Sustaining Demurrer to Cross-Bill, &c., and Leave to Amend. Filed Nov.* 2, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
v.
JOHN J. KNOX, Com'r, &c. } Eq., 5723.

This cause having come on to be heard in its regular order on the demurrer of the complainant of Alex. R. Shepherd, Cross, Taylor, and Bacon to the cross-bill of the commissioners of the Freedman's Savings and Trust Company, it is, this 2nd day of November, 1881, ordered that said demurrer be, and the same hereby is, allowed, and the said commissioner of said trust company is hereby authorized to amend his said cross-bill by way of supplement and other-
284 wise as he may be advised.

It is further ordered that said commissioner, John J. Knox, have leave to make Andrew C. Bradley a party defendant to said cross-bill, and for the purpose of such amendments and supplements said commissioner is allowed twenty days.

By the court: A. WYLIE.

285 *Petition for Rehearing Demurrer to Cross-Bill. Filed Nov.* 11, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD *et al.*
vs.
THE FREEDMAN'S SAVINGS & TRUST COMPANY *et al.* } No. 5723, Eq. Doc. 17.

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of Alexander R. Shepherd respectfully shows that the decree rendered herein on the 2nd day of November, 1881, was rendered at a time when Wm. F. Mattingly, one of the counsel for complainants, was engaged in the court in general term in the argument of a cause, and Andrew C. Bradley, the other counsel for complainants, was absent in the city of New York;
286 that he is informed that the said cause was not argued upon the defendants' cross-bill, but that it was suggested to the court by defendants' counsel that the demurrer to the cross-bill be sustained, and that he have leave to amend said cross-bill, and that the court thereupon passed the said decree; that the said decree is inconsistent, in this, that the leave to amend is inconsistent with the sustaining of the demurrer; and your petitioner prays that the said

cause may be reheard upon the cross-bill and demurrer thereto and said decree opened and the cross-bill dismissed.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol'rs for Compl't Shepherd.

Andrew C. Bradley, being duly sworn, deposes and says that the facts stated in the above petition of his own knowledge are
287 true and those stated upon information received from others he believes to be true.

A. C. BRADLEY.

Subscribed and sworn to before me this 11th day of November, 1881.

R. J. MEIGS, *Clerk*,
By M. A. CLANCEY, *Ass't Clerk.*

288 *Amendments and Supplement to the Cross-Bill of the Commissioners of the Freedman's Savings and Trust Company. Filed Nov.* 22, 1881.

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
vs.
THE COMMISSIONERS OF THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.* } Equity No. 5723.

The commissioners of the Freedman's Savings and Trust Company, John J. Knox (by the leave of the court first had and obtained), by way of amendments and supplements to the cross-bill, respectfully states, on information and belief, as follows:

First. That the commissioners of the Freedman's Savings and Trust Company (his predecessors) filed their cross-bill herein
289 on the 20th day of October, 1877, and that divers proceedings and orders have since been taken and made, respectively, in this cause.

Andrew C. Bradley appears to have, or claims to have, some interest in the matters and things mentioned in the original bill and answer thereto and in the said cross-bill, and that the said Bradley was, on the 10th day of May, 1879, by a decree of this court passed on that day, appointed receiver in this cause to take charge of the property involved therein, and to collect and receive the rents then due and the rents thereafter to become due, whether included in judgment of the Court of Claims or in appropriations made by law, with certain exceptions specified in said decree. The said Bradley duly qualified as such receiver, and as such collected and now holds
290 large sums of money, to wit, about $787.50, which constitutes in part the subject-matter of controversy in this cause. The said decree was passed by and on the consent of the solicitor of the

said complainant in the original bill, Alex. R. Shepherd, and of the solicitor of the said commissioners, and said consent of said Alexander R. Shepherd was given thereto in consideration of the concession on the part of said commissioners that he, the said Shepherd, might collect and use the rents of said property, accrued and to accrue, from the 6th day of June, 1878, to the 1st day of July, 1879. The said decree contains an injunction prohibiting each and all of the parties to the cause, their agents and attorneys, from applying for and receiving any moneys due or to become due on account of the use and occupation of said property and premises, except as in said decree excepted. The deed of trust men-
291 tioned and described in the original bill and in the cross-bill, dated June 9th, 1873, made to Alvord and Stickney by said Andrew C. Bradley and wife, conveying said premises to secure the payment of the aforesaid notes given to secure the balance of the purchase-money was upon the trust, amongst others, "to permit the said parties, Andrew C. Bradley, his heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for their sole use and benefit until default be made in the payment of said notes or any of them or any installment of interest due thereon, or on any proper cost, charge, commission or half commission, or expense in and about the same."

Second. Prior to the passing of said decree of May 10th, 1879, and on the 18th day of March, 1879, this court made a restrain-
292 ing order herein prohibiting the complainants, their agents, attorneys, and representatives, and each of them, from collecting any money or other thing of value from the United States on account of the said lease made between the United States and the said Andrew C. Bradley, and mentioned in the proceedings herein, which injunctional order never has been discharged or set aside. Said order of injunction was duly served upon the defendant, Nathaniel Wilson, on the 20th day of April, 1878.

Third. That Nathaniel Wilson, who has been made a defendant herein, and who was the attorney for said Alex. R. Shepherd *et al.*, holds in his hands large sums of money, to wit, $4,675.00, by him collected and received through judgments of the Court of Claims and appropriations made by law on account of the rents due for the use and occupation of the premises mentioned in the pro-
293 ceedings in this cause, which constitute in part the subject-matter of controversy herein. The said funds were collected and received by the said Wilson after the 20th day April, 1878, and much the greater part thereof (a draft for $3,475.00) was received by him long after May 10th, 1879.

Fourth. Since the filing of the original bill and the cross-bill herein, and on or about 16th day of February, 1880, the premises mentioned and described in the proceedings in this cause were duly sold by the surviving trustee, George W. Stickney, under the powers conferred upon him by the deed of trust mentioned in the pleadings and proceedings, and the net proceeds from such sale amounted to the sum of $8,500.00, subject to taxes, and not more, leaving a defi-

ciency due and unpaid on said notes made by said Andrew C. Bradley amounting to about the sum of $11,466.13, and int. *for* Feb. 16, 1880.

294 In view of the matters and things set forth in the pleadings in this cause, the said commissioner of the Freedman's Savings and Trust Company submits to the court that he is entitled to all the said funds arising out of said premises pending this litigation, and he therefore prays—

First. That the said funds in the hands of the said Andrew C. Bradley and Nathaniel Wilson may be paid over to him, and that all orders necessary and proper may be made in the premises.

Second. That writs of subpœna may be issued to the said complainants in the original bill and to the said Andrew C. Bradley and Nathaniel Wilson, requiring them and each of them to answsr the cross-bill and these amendments and supplements thereto.

Third. That he may have such other and general relief as may be proper and agreeable to equity.

JOHN J. KNOX,
Comptroller of the Currency and
295 *Commissioner of the F. S. & T. Co.*

ENOCH TOTTEN,
Sol'r for John J. Knox.

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

I, John J. Knox, being first duly sworn, do depose and on my oath say that I am Comptroller of the Currency and — the commissioners of the Freedman's Savings and Trust Company; that I have read the foregoing amendment and supplement to the cross-bill of the commissioners of the F. S. and T. Co. and know the contents thereof, and that the facts therein stated upon my information and belief I believe to be true.

JOHN J. KNOX.

Subscribed and sworn to before me this 21st day of Nov., 1881.
[SEAL.] WM. B. MORGAN,
Notary Public.

A copy of the foregoing served on me this 15th day of Dec., 1881.
WM. F. MATTINGLY.

296 Original.

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *et al.*, Comp.,
vs.
JOHN A. J. CRESWELL *et al.*, Def. } Eq. 5723, Doc. 17.

DEC. 3RD, 1881.

Issued December 3rd, 1881.
Returned " 8th, 1881.

The President of the United States to Alexander R. Shepherd, George Taylor, Samuel Cross, Peter F. Bacon, and Andrew C. Bradley,— Nathaniel Wilson, defendant-:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of this cross-bill and the amendment
297 and supplement thereto under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR.,
Ass't Clerk.

Endorsements: Service acknowledged. Nathaniel Wilson. Dec. 8, 1881. Summoned A. C. Bradley Dec. 8th, 1881. C. E. Henry, marshall.

298 *Petition for Rehearing Denied. Filed Dec.* 27, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
vs.
COM'RS F. S. & T. Co. } Equity 5723.

This cause having come on to be heard on the complainant's petition for a rehearing, and a counsel having been heard, it is, this 27th day of December, 1881, ordered that the prayer of said petitioner be, and the same is hereby, denied.

By the court:

A. WYLIE.

299 *The Joint and Several Answer of Alexander R. Shepherd, Samuel Cross, Peter F. Bacon, and Andrew C. Bradley to the Amended and Supplemental Cross-Bill of the Commissioners of the Freedman's Savings and Trust Company. March* 15 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD *et al.*
vs.
THE COMMISSIONERS OF THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.* } Eq. No. 5723.

First. They admit the allegations of the first paragraph of said bill, except this, which they deny, that the consent of said Alexander R. Shepherd was given to the passing of the decree of May 10, 1879, in consideration of the concession on the part of said commissioners that he might collect and use the rents of said property from
300 the 6th day of June, 1878, to the 1st day of July, 1879, and they say that the said receiver was appointed upon petition

and not upon the cross-bill, and that no right was intended to be waived or conceded thereby.

Second and third. They admit the allegations of the second and third paragraphs.

Fourth. They admit that the said premises were sold as alleged, but they say that said premises were sold to the commissioners of the Freedman's Savings and Trust Company, and that they are estopped to say that the debt secured was not paid by said sale, and that there is a deficiency due and unpaid upon said notes, for they say that by the said deed of trust the terms of sale are prescribed, and that said terms are the amount of the debt unpaid and the expense of sale in cash and the balance upon time, and the trustee was not authorized to make sale unless he got as much in
301 cash as the amount of the debt and the expenses of sale; that the said sale was not advertised upon those terms, and the said plaintiffs in the cross-bill purchased at such sale and received a deed in which it is recited that they had complied with the terms of said sale and they entered into possession thereof, and they pray the same benfit of such estoppal as if they had specially pleaded the same in bar of the said amended and supplemental cross-bill.

And, further answering, they say that the said deed of trust was given to secure the deferred payments of the purchase-money to the Freedman's Savings and Trust Company of the said premises; that the purchase price from said company was $18,500, and that said Shepherd had paid to it $3,900 on account of the principal and nearly $2,000 on account of interest, and that the said premises were put in repair by said Shepherd after his purchase from
302 said company and were rented to the United States, and were so rented at the time of said sale at the rate of $1,500 per annum, and were in good condition at the time of said sale; and, upon information and belief, they aver that the commissioner- of said company *has* been receiving rent at the rate of $1,500 per annum from the United States ever since said purchase, and that it would be unjust and inequitable to permit them to purchase the said property and under the circumstances to claim the deficiency; and they say that the repurchase by said company under the circumstances was a satisfaction of said claim for unpaid deferred payments of purchase-money.

And, further answering, they say that under the terms of the said deed of trust the said Shepherd was and is entitled to all rents that accrued before the sale of said property, whether collected by receiver or not, and that the only right of the party secured
303 by said deed of trust was to have the said property sold and to be paid out of the proceeds of the sale; that the said commissioners or said company under said deed of trust had no interest in the land itself, and the rents and profits were not conveyed under said deed of trust, and they therefore have and had no right to them, and they claim the same benefit of this defence as if they had specially pleaded the same in bar.

And, further answering, they say that the sole purpose of said original bill was to obtain a temporary restraining order until the

said cause, then pending in the Supreme Court of the United States, should be disposed of, and the proceedings in this cause show that immediately after the decision of said cause by said Supreme Court the temporary restraining order was dissolved upon the application of the commissioners of the Freedman's Savings and Trust Company, and thereupon the purpose and entire office of the original bill was fulfilled and there was no cause pending, and it was
304 not until after that *that* process was issued to answer the cross-bill, and they pray that they may have the same benefit of this defence as if they had specially pleaded the same in bar.

And, further answering, they say that the demurrer to the cross-bill was sustained by the court, and is conclusive as against this bill; and they aver and charge that no new matter has been introduced, by way of amendment or supplement, which entitles the amended and supplemental cross-bill to any greater consideration, and it should be dismissed, and they pray that they may have the same benefit of this objection as if they had specially demurred to the said bill on that ground; and, having fully answered, &c.

WM. F. MATTINGLY,
Sol'r for Def'ts.
ALEXANDER R. SHEPHERD,
By WM. F. MATTINGLY AND
A. C. BRADLEY, *Att'ys-in-Fact.*
305 SAMUEL CROSS,
PETER F. BACON, *Trustees.*

A. C. Bradley — Sam. Cross, being duly sworn, say they have heard read the above answer by them signed and know the contents thereof, and that the facts therein stated of their own knowledge are true, and that those stated upon information received from others they believe to be true.

December 23rd, 1882.

R. J. MEIGS,
Cl'k Sup. C't D. C.
By R. J. MEIGS, JR., *Ass't C'k.*

The annexed paper was subscribed to before me and sworn to before me by Peter F. Bacon February 20, 1883.

[SEAL.] SAMUEL H. WALKER,
Notary Public.

It is agreed that the foregoing answer shall be admitted and received as the answer of Alex. R. Shepherd, his oath thereto being waived.

ENOCH TOTTEN,
For F. S. & T. Co.

306 *Joinder of Issue.* *Filed March* 17, 1883. *R. J. Meigs, Cl'k.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
vs.
THE COMMISSIONERS OF THE FREEDMAN'S SAVINGS & TRUST COMPANY *et al.*
} Equity No. 5723.

The plaintiff joins issue on the answer of Alexander R. Shepherd, Samuel Cross, Peter F. Bacon, and Andrew C. Bradley to the amended and supplemental cross-bill of the commissioners of the Freedman's Savings and Trust Company.

ENOCH TOTTEN,
For F. S. & T. Company.

307 *Notice of Motion.* *Filed March* 26, 1883.

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.*
} Equity No. 5723.

Take notice that on Thursday, March 31, 1883, at the meeting of the special term equity court or as soon thereafter as counsel can be heard, I shall move the court to overrule the exceptions to the special auditor's report and confirm the same or to refer the cause to the said auditor to restate the accounts in the cause.

ENOCH TOTTEN,
Att'y for Commissioners F. S. & T. Co.

To Nathaniel Wilson, Esq., A. C. Bradley, Esq., Messrs. Merrick & Morris, H. H. Wells, Esq.

March 25, '83.—Send copy by mail to N. Wilson, Esq., & to Messrs. Merrick & Morris, postage prepaid.

E. T.

308 *Notice of Motion.* *Filed April* 7, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD *et al.*
vs.
FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.*
} Equity No. 5723.

Take notice that on Wednesday, April 11, 1883, at the meeting of the special term equity court, before Mr. Chief Justice Cartter, or as soon thereafter as counsel can be heard, I shall move the court to

overrule the exceptions to the special auditor's report and confirm the same or to refer the cause to the said auditor to restate the accounts in the cause.

ENOCH TOTTEN,
Att'y for the Freedman's Savings & Trust Co.

To Nathaniel Wilson, Esq., A. C. Bradley, Esq., Messrs. Merrick & Morris, Esqs., H. H. Wells, Esq., Wm. F. Mattingly, Esq.

309 *Motion for Substitution of Henry W. Cannon as Commissioner Instead of John J. Knox. Filed Nov.* 17, 1884.

In the Supreme Court of the District of Columbia Holding a General Term. In Equity.

ALEXANDER R. SHEPHERD
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY. } No. 5723.

And now comes Henry W. Cannon, esquire, Comptroller of the Currency of the United States, and shows to the court that by virtue of the act of Congress approved February 21st, 1881, the Secretary of the Treasury of the United States has, on the 23rd day of May, 1284, appointed him commissioner of the Freedman's Savings & Trust Company, and that he has duly qualified as such commissioner and that he is, therefore, entitled to be made a party to this cause instead of John J. Knox, Esq., the former com'r, & he prays an order accordingly.

ENOCH TOTTEN,
For Complainants.

310 *Order Substituting Henry W. Cannon, Comptroller, &c., Instead of John J. Knox. Filed Nov.* 17, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. General Term.

ALEXANDER R. SHEPHERD
vs.
FREEDMAN'S SAVINGS & TRUST COMPANY. } Equity No. 5723.

Aud now comes the solicitor of the Treasury, represented by Enoch Totten, Esquire, and suggests the appointment of Henry W. Cannon, esq., Comptroller of the Currency, as commissioner in lieu of John J. Knox, and asks due entry of the change on the docket of the court in the above-entitled cause.

And, upon said motion, it is this 17th day of November, 1884, ordered that the said entry as prayed for be made upon the docket of the court.

By the court:

D. K. CARTTER,
Chief Justice.

311 In the Supreme Court of the District of Columbia the — day of March, A. D. 1881. In Equity.

JOHN W. THOMPSON, Complainant,

vs.

ANDREW C. BRADLEY, ALEXANDER R. SHEPHERD, GEORGE TAYLOR, Samuel Cross, Peter F. Bacon, Nathaniel Wilson, William Thompson, and the Freedmen's Savings and Trust Company, Defendants.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant, John W. Thompson, says as follows:

1. He is a resident of the city of Washington, in the District of Columbia, and sues in his own right.

2. The defendant, The Freedmen's Savings and Trust Company, is a body corporate in the District of Columbia under and by virtue of the laws of the United States, and is sued in its own
312 right. The affairs of said body corporate are now, under an act of the Congress of the United States, administered by the Honorable John J. Knox, Comptroller of the Currency of the United States. The defendant, Alexander R. Shepherd, is now, it is believed, a resident of the Republic of Mexico, and is sued in his own right. The defendants, Andrew C. Bradley, George Taylor, Samuel Cross, Peter F. Bacon, Nathaniel Wilson, and William Thompson, are all residents of the city of Washington, in the District of Columbia, and are sued merely in their trust capacity as hereinafter more fully to be set forth.

3d. Being indebted to the complainant in the sum of fifteen thousand dollars, the defendant, Alexander R. Shepherd, on the 10th day of March, A. D. 1873, executed and delivered to the complainant two several promissory notes of him, the said Shepherd, dated the said day, one for the sum of $7,000, payable to the order of the complainant two years after date, and the other for the sum of $8,000, pay-
313 able to the order of the complainant three years after date, each with interest until paid at the rate of eight per centum per annum, payable semi-annually; and on the same day, in order to secure the payment of said notes, by deed of even date therewith, which was duly recorded in Liber No. 712, folio 128, of the land records for the District of Columbia, and of which a true copy is hereunto annexed, marked "Complainant's Exhibit No. 1," and made part of this bill of complaint, the said Shepherd conveyed to the defendant, William Thompson and his heirs certain lots of ground and premises in square numbered one hundred and sixty-four (164), in said city of Washington; all of which will more fully and at large appear by reference to said exhibit.

4th. The said notes yet remain in the possession and ownership of the complainant unpaid and unsatisfied, except as to the interest on said secured note, to wit, that for $8,000, which was paid
314 up to the 10th day of March, A. D. 1875, and as to the interest on said first note, to wit, that for $7,000, up to the 22d

day of June, A. D. 1875, and certain portions of the principal, amounting in the aggregate to the sum of $3,322.72. On account of said indebtedness there is now due and payable the sum of $11,677.28, with interest on $8,000 thereof from the 10th day of March, A. D. 1875, and on $3,677.28 thereof from the 22d day of June, A. D. 1875, both at the rate of eight per centum per annum until paid.

5th. At divers times subsequent to the execution of the aforesaid deed of trust, in pursuance of request from said Shepherd, and upon his assurance that others and further security would be substituted therefor, the defendant, William Thompson, with the consent of this complainant, released to certain purchasers thereof from said Shepherd some of the lots of ground and premises conveyed to said defendant Thompson in and by said deed of trust. In consequence of the complications into which the complainant has been
315 led by said Shepherd, through the execution of such releases, it has become difficult, if not impossible, for the complainant to realize anything from the security of said deed of trust, and said security is now utterly insufficient for the satisfaction of the complainant's just demand in the premises.

6th. By a deed, dated on the 15th day of November, A. D. 1876, and recorded in Liber No. —, folio —, of the land records for the District of Columbia, of which a true copy is hereto annexed, marked "Complainant's Exhibit No. 2," and made part of this bill of complain*ant*, the defendant Shepherd, having become insolvent, conveyed and assigned to the defendants Taylor and Cross and Henry A. Willard certain property, real and personal, set forth in a schedule annexed to said deed and purporting to be all the property and estate of said Shepherd, except his interest in the assets of a certain firm, then existing, of A. R. Shepherd and Company,
316 in trust to secure the payment of his debts to the amount of $310,000. The said Willard having declined to accept the trust declared in said deed, the defendant Bacon was substituted in his place a-d accepted the trust together with said Taylor and Cross.

7th. In the schedule aforesaid the said Shepherd specified among the property conveyed by the said deed or intended thereby to be conveyed a certain lot of ground No. 4, in square No. 377, in the city of Washington, in the District of Columbia, with the appurtenances, and also a certain claim of said Shepherd against the United States then pending for the rents and profits of said lot of ground and premises under a lease of the same by the United States.

8th. Among the trust declared by the said deed from Shepherd to the defendants Taylor, Cross, and Bacon it was provided that said trustees should make all such conveyances and transfers of the property therein conveyed to them or any portion thereof as
317 they might be required by said Shepherd to make for the purposes of perfecting and carrying out any settlement, sale, or exchange which the said Shepherd might make for the benefit of his creditors, the immediate management of the property having been reserved by the deed to said Shepherd himself.

9th. Thereupon, in consideration of the premises and in pursuance of the said deed from the defendant Shepherd to the defen-

dants Taylor, Cross, and Bacon, and to secure to the complainant the payment of the indebtedness due to him from said Shepherd as hereinbefore set forth, the said Shepherd by a- instrument of writing dated on the 21st day of June, A. D. 1877, whereof a true copy is hereto annexed, marked "Complainant's Exhibit No. 3," and made part of this bill of complaint, covenanted and agreed with the complainant that the proceeds to be received from the United States on account of the claim aforesaid and on account of the use and
318 occupation by the United States of the hereinbefore-mentioned lot of ground No. 4, in square No. 377, and premises, should stand pledged for the payment of said indebtedness; and that any draft or check that might be issued in payment or part payment of said claim should be endorsed and delivered to the trustee named in said trust, to wit, the defendant, William Thompson, and the proceeds thereof, less all proper costs and charges, should be applied to the payment of said indebtedness or to so much thereof as they might be sufficient to pay. As appears from said instrument of writing, the defendants Taylor, Cross, and Bacon, as trustees or assignees of Shepherd, in the before-mentioned deed to them, consented to said covenant and agreement and concerned therein; and the defendant, Andrew C. Bradley, also joined in the same for the reason that all the claim and demand of the defendant Shepherd for the use and occupation of the aforesaid lot of ground and premises by the
319 United States was under a lease to the United States of said lot and premises by the defendant Bradley, executed on the 6th day of June, A. D. 1873, while said Bradley was the record owner of said lot of ground and premises, the same having been subsequently conveyed by said Bradley to said Shepherd by deed dated on the 27th day of August, A. D. 1874.

10th. On or before the 9th day of June, A. D. 1875, the defendant, Andrew C. Bradley, had purchased the said lot of ground and premises No. 4, in square No. 377, from the defendant, The Freedman's Savings and Trust Company, and on said last-mentioned day said Bradley executed a deed of trust to secure to the said company the payment of the portion of the purchase-money thereof which remained unpaid. Soon afterwards said Bradley executed a lease of said property to the United States, acting through the Postmaster General, for the use of the Post Office Department of the United States, for the term of three years from and after the 6th day
320 of June, A. D. 1873, at an annual rent of $4,200 a year, payable quarterly on the last day of September, December, March, and June in each and every year, subject to an appropriation by Congress for the payment of the same. Said lease provided for a renewal thereof for the term of two years from and after the completion of the original term of three years; and the United States did accordingly renew the same and continued to use and occupy the said lot of ground, being the same that are designated in Exhibit No. 3, hereinbefore mentioned, as 915 E street, for the said further term of two years and until the 30th day of June, A. D. 1878.

11th. After the execution of said lease and while the United

States were in possession and occupation of the aforesaid premises thereunder, the said defendant, Andrew C. Bradley, by a deed dated on the 27th day of August, A. D. 1874, conveyed the said lot of ground and premises to the defendant Shepherd, and as-
321 signed and transferred the said lease to him; and thereafter the said Shepherd collected and received the rents and profits of said premises at the rate of $4,200 a year until the year 1876.

12th. For the fiscal year ending June 30, 1876, the Congress of the United States appropriated only $1,800, instead of $4,200 as in former years, for the use and occupation of said premises by the United States, but the defendant Shepherd, claiming that he was entitled to have the sum of $4,200 for said year, caused suit to be instituted by his attorney, the defendant, Nathaniel Wilson, in the Court of Claims of the United States on the — day of —— to recover from the United States for said year the said sum of $4,200; said suit was instituted in the name of the defendant, Andrew C. Bradley, to the use of the defendant, Alexander R. Shepherd, to the use of the defendants, George Taylor, Samuel Cross, and Peter F. Bacon, the
322 said last-mentioned defendants having then become the trustees and assignees of the defendant Shepherd in pursuance of the deed of trust to them hereinbefore mentioned, but said Court of Claims decided that the said claimants were entitled only to the sum of $1,800 for said year, and, an appeal having been taken to the Supreme Court of the United States, the judgment of the Court of Claims was affirmed by said Supreme Court.

13th. While said appeal was pending in said Supreme Court the defendant Shepherd, by his attorney aforesaid, caused another suit to be instituted in said Court of Claims against the United States to recover rent for the said premises, at the same rate of $4,200 a year, for the fiscal year- ending June 30th, 1877, and June 30th, 1878. Said suit was instituted on the — day of —— in the same names as the aforesaid suit, and upon the affirmance of the former judgment by the Supreme Court, as hereinbefore stated, the second suit was discontinued and dismissed.

323 14th. On account of the use and occupation of the aforesaid lot of ground and premises by the United States for the three years ending June 30, 1876, June 30, 1877, and June 30, 1878, the defendant Shepherd expected and claimed from the United States the sum of about $12,600 in all, and it was the said aggregate sum that was pledged to the complainant, as hereinbefore stated, and which the defendants Bradley, Shepherd, Taylor, Cross, and Bacon covenanted and agreed to apply to the satisfaction of the complainant's just *demar* hereinbefore set forth.

15th. On the 3d day of May, A. D. 1879, the defendant, Nathaniel Wilson, as attorney for the defendant Shepherd, received from the Treasury of the United States a draft for the sum of $1,800, being for the rent or use and occupation of the aforesaid lot of ground and premises No. 4, in square No. 377, therein designated as No. 915 E street, for the year ending June 30th, 1876. Said draft was
324 drawn in favor of Andrew C. Bradley, to the use of A. R. Shepherd, to the use of George Taylor, Samuel Cross, and

Peter F. Bacon, trustees; and said Bradley, Shepherd, Taylor, Cross, and Bacon thereupon endorsed the same and delivered it back to the defendant Wilson with instructions to him to pay out of the proceeds thereof the costs and charges incident to the prosecution of the aforesaid suit or suits in the Court of Claims and the Supreme Court of the United States, including the fees of said Wilson for his professional services in said suits, and to pay the balance over to this complainant, on account of his claim and demand aforesaid. At the same time the defendant Shepherd, without cause or right, insisted that two and one-half (2½) per centum of said proceeds should be paid to the defendant Bradley, which was accordingly done, without any consideration whatever given therefor by said Bradley or by said Shepherd. The costs, charges, and fees aforesaid were also paid, and there remained in the hands of the de-
325 fendant Wilson the sum of $1,255 out of the proceeds of the aforesaid draft, which he was about to pay to this complainant in pursuance of his instructions aforesaid and of the agreement hereinbefore referred to and set forth in Complainants' Exhibit No. 3, when he was stopped and prevented by a notice and rule served upon him in a cause of Shepherd and others *vs.* Cresswell and others, No. 5723, equity, in this court, which notice and rule were procured to be issued and served upon said Wilson by said Bradley on or about the 24th day of May, A. D. 1879. Neither this complainant nor said Wilson was a party to said cause.

16th. On or about the 26th day of May, A. D. 1879, the defendant Wilson, as the attorney for the defendant Shepherd, received from the Treasury of the United States another draft (No. 7336) for the sum of $3,475, being for the rent of the aforesaid lot of ground and premises, No. 915 E street, on account of its use and occupa-
326 tion by the United States for the year- ending June 30, 1877, and June 30, 1878; said draft was drawn in favor of the same parties as the premises *are* hereinbefore mentioned, and is yet in the custody and possession of the defendant Wilson. The defendants Bradley and Shepherd have, without just cause, refused to endorse the same, and the defendants Taylor, Cross, and Bacon have also failed to endorse it; and the defendant Wilson, by such refusal and failure and by the proceedings in the aforesaid equity cause No. 5723, has been prevented from collecting said draft and applying the proceeds thereof, as the complainant understands he is ready and willing to do, to the payment of the complainant's claim aforesaid, so far as the same may be available for the purpose.

17th. The complainant respectfully submits that the proceedings in said cause No. 5723, equity, to which the complainant prays leave to refer as part of this bill of complaint, show no sufficient cause or justification whatever for the refusal and failure of the
327 defendants Bradley, Shepherd, Taylor, Cross, and Bacon to endorse the aforesaid draft for $3,475, so that the proceeds and the sum of $1,255 aforesaid may be paid over to this complainant.

The purpose of said cause has been fulfilled and there are no longer any issues pending in said cause; yet, by reason of certain proceedings therein, the defendant, The Freedmen's Savings and

Trust Company, claims to be entitled to receive the proceeds and the amount of the aforesaid draft in the hands of the defendant Wilson. The complainant respectfully shows that such claim is utterly groundless and unfounded.

18th. In a certain other cause pending in this court, being equity cause No. 5433, in which one Johnson was complainant and Fugitt and others were defendants, and in which the indebtedness hereinbefore set forth from the defendant Shepherd to this complainant, the said defendant Shepherd having been called as a
328 witness in the case on the 25th day of April, A. D. 1879, testified before the special auditor therein appointed as follows: "I assigned certain rents of house 915 E street to Mr. Thompson (meaning this complainant), which assignment was concurred in by my trustees and which will aggregate about $5,400.

"A restraining order issued from the equity court restraining the payment of any part- due rents, which order has not yet been rescinded.

"There is little doubt that Mr. Thompson will receive this sum, as the assignment was made before this order was issued."

And — is, and by the said statement and testimony said defendant Shepherd intended it to be, understood that by the instrument of writing set forth in "Complainants' Exhibit No. 3," hereinbefore set forth, said Shepherd and his trustees intended that the rents to be derived from the aforesaid premises, No. 915 E street, for the three years ending June 30, 1876, June 30, 1877, and June 30, 1878, should be applied to the payment of his indebtedness to the complainant, as hereinbefore set forth. The complainant prays
329 leave to refer to the proceedings in said equity cause No. 5433 as part of this bill of complaint.

19th. The complainant further charges that the defendant, Alexander R. Shepherd, is now and has been since the year 1876 utterly insolvent; that the property in the hands of his trustees—Taylor, Cross, and Bacon—conveyed to them by the deed of assignment hereinbefore mentioned, if any such property there now is (which the complainant doubts), is utterly insufficient to pay the debts of said Shepherd or even the complainant's just demand against him; that said Shepherd, so far as this complainant is informed and believes, has no property in this District or elsewhere subject to be taken in execution at common law; that a judgment at common law against said Shepherd would be of very doubtful value and could not, probably, be enforced by execution, and that said Shepherd is now a non-resident of the District of Columbia and of
330 the United States.

20th. The complainant further shows that the defendant Shepherd is indebted to him in another sum of $4,000 for money lent to him by the complainant, for which amount the complainant holds his promissory note dated the 8th day of November, A. D. 1876, and payable on demand to the complainant or order, with interest at the rate of eight per centum per annum until paid, and payable at the National Metropolitan Bank. Upon said note, when said defendant refused to pay the same, the complainant caused suit

to be instituted against said Shepherd on or about the 28th day of June, 1879, which suit is cause No. 20935 on the common-law side of this court, and the complainant recovered judgment thereon on the 8th day of April, A. D. 1880, and upon said judgment he caused execution to be issued, and the writ of *fi. fa.* therein issued has been returned by the marshal unsatisfied and with the endorse-
331 ment thereon of "*nulla bona;*" all of which will more — and at large appear by a short copy of said judgment and return, hereto annexed, marked "Complainants' Exhibit No. 4," and made part of this bill of complaint.

21st. As will further appear from said short copy, the complainant, by way of further execution in said cause No. 20935 at common law, procured a writ of attachment to be issued therein and to be laid in the hands of said defendant Wilson upon the chattels, goods, and credits of said Shepherd, and said defendant Wilson has made answer to said writ setting forth the facts hereinbefore stated in reference to the money and drafts in his hands, and on account of the premises no further proceedings have been had upon said writ, and the said judgment in cause No. 20935 at law remains wholly unpaid and unsatisfied; and the complainant respectfully submits
332 that, if he is not entitled to the funds in the hands of the defendant Wilson on account of the claim hereinbefore first set forth he is entitled to it on account of his said last-mentioned judgment and the writ of attachment issued thereon as aforesaid.

22d. The complainant further charges that the defendant Bradley is the duly authorized agent and attorney of the defendant Shepherd in respect of all the matter in controversy herein set forth; that the complainant is informed and believes that said Bradley has a power of attorney from said Shepherd to endorse the aforesaid draft in the hands of the defendant Wilson, and to receive and dispose of the proceeds thereof if the same should come into his hands, and that it is the purpose and intention of said Bradley and of said Shepherd to get possession of said draft and to collect the proceeds thereof, and to apply the same to their own use and purpose, in total disregard of their agreement aforesaid with the complainants
333 and of the complainant's just rights in the premises.

The complainant therefore prays as follows:

1st. That the aforesaid Andrew C. Bradley, Alexander R. Shepherd, George Taylor, Samuel Cross, Peter F. Bacon, Nathaniel Wilson, William Thompson, and the Freedman's Savings and Trust Company be made partie- to this bill as defendants, and be served with process and answer thereto, but without oath, an answer under oath being expressly waived.

2d. That an order of publication may issue against the said defendant Shepherd as a non-resident of the District of Columbia.

3d. That the defendant, The Freedman's Savings and Trust Company, be perpetually enjoined from claiming the aforesaid funds or drafts as the proceeds thereof in the hands of said defendant Wilson or setting up title thereto or to any part thereof.

4th. That the defendant, Nathaniel Wilson, be enjoined and re-

strained from delivering or paying over to the defendants,
334 Bradley, Shepherd, Taylor, Cross, and Bacon, or to either or any of them, the funds or draft in his hands or any proceeds of such draft or any part of such proceeds.

5th. That the defendant Wilson be required to pay to the complainant the sum of $1,255 in his hands, as hereinbefore set forth.

6th. That the defendants, Bradley, Shepherd, Taylor, Cross, and Bacon, be required to endorse the aforesaid draft for $3,475 now in the hands of said Wilson, and that said Bradley be required to endorse the same as attorney for said Shepherd in pursuance of the power vested in him for that purpose and accepted by him.

7th. That said Wilson be thereupon required to collect the amount of said draft and pay the same to this complainant.

8th. That the defendants, Bradley, Shepherd, Taylor, Cross, and Bacon, be perpetually enjoined and restrained from setting up title to said draft or the proceeds thereof.

335 9th. That the complainant may have such further and other relief as the nature of his case may require and to the court may seem just in the premises.

J. W. THOMPSON.

M. F. MORRIS,
H. H. WELLS,
Sol'rs & of Counsel.

I do solemnly swear that I have read the foregoing bill of complaint signed by me and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

J. W. THOMPSON.

Subscribed and sworn to before me this twenty-first day of March, A. D. 1881.

WM. G. MOORE,
Notary Public.

336 In the Supreme Court of the District of Columbia, April 13 1881.

JOHN W. THOMPSON, Comp.,
vs.
ANDREW C. BRADLEY *et al.*, Def. } No. 7675, Eq. Doc. 21.

The President of the United States to Andrew C. Bradley, Alexander R. Shepherd, George Taylor, Samuel Cross, Peter F. Bacon, Nathaniel Wilson, William Thompson, Freedman's Savings and Trust Co., defendants:

You are hereby commanded to appear in this court, at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.
[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't Cl'k.*

337 In the Supreme Court of the District of Columbia, the 28 Day of June, 1881. In Equity.

JOHN W. THOMPSON, Comp.,
vs.
ANDREW C. BRADLEY, ALEXANDER R. SHEPHERD, GEORGE Taylor, Samuel Cross, Peter F. Bacon, Nathaniel Wilson, Wm. Thompson, & The Freedman's Savings & Trust Company, Def. } No. 7675.

The defendant, Wm. Thompson, answering, says that he has no interest in the subject-matter of the above-entitled suit excepting that he is the trustee in a deed of trust made by the defendant Shepherd to this defendant upon the premises and to secure the debt as in the complainant's bill of complaint *dated;* and he, further answering, says that having no knowledge to the contrary
338 he admits all the said several matters to be true as they are in said bill stated, and he knows no reason why the complainant should not have the relief as is in and by said bill prayed for.

WM. THOMPSON.

339 *Motion for Leave to Make John Jay Knox, Com. of Currency of U. S., Party Defendant. Filed July* 22, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN W. THOMPSON, Com.,
vs.
ALEXANDER R. SHEPHERD *et al.*, De. } Eq. No. 7675, Doc. 21.

The complainant, John W. Thompson, comes and moves the court for leave to amend his bill in this cause by making the Honorable John Jay Knox, Comptroller of the Currency of the United States, a party defendant to said bill as trustee or commissioner under the acts of the Congress of the United States to manage the affairs of the Freedman's Savings and Trust Company.

M. F. MORRIS,
H. H. WELLS,
Sol'rs for Complainant.

As solicitor for the Freedman's Savings and Trust Com-
340 pany and John J. Knox, Comptroller of the Currency of the United States, trustee and commissioner of the affairs of said company, I hereby agree that said Knox be made a formal party defendant to this cause.

ENOCH TOTTEN,
For Com'rs F. S. & T. Co.

341 *Order Making John Jay Knox, Comptroller of the Currency of the United States, a Party Defendant. Filed July* 22, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN W. THOMPSON, Comp.,
vs.
ALEXANDER R. SHEPHERD *et al.*, Def. } Equity No. 7675.

Upon the application of the solicitors of the complainant and the consent of the solicitor of the Freedman's Savings and Trust Company it is ordered by the court, this 22nd day of July, A. D. 1881, that John Jay Knox, Comptroller of the Currency of the United States, as trustee and commissioner of the affairs of the Freedman's Savings and Trust Company aforesaid, be made a party defendant to this cause, and that the complainant's bill be taken as amended for that purpose.

A. B. HAGNER,
Asso. Justice.

342 *Separate Answer of the Freedman's Savings and Trust Company. Filed July* 29, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN W. THOMPSON, Complainant,
vs.
ANDREW C. BRADLEY and THE FREEDMAN'S SAVINGS & TRUST CO. *et. al.*, Def. } Equity No. 7675.

The separate answer of the Freedman's Savings and Trust Company to the bill of the above-named complainants respectfully shows as follows, to wit:

First and second. The averments contained in the first and second paragraphs of said bill are admitted to be true.

Third. As to the matters and things set forth in the third paragraph of said bill this defendant has no knowledge, and can
343 neither admit nor deny the same, but calls for proof of the facts alleged.

Fourth. As to the averments contained in the fourth paragraph of said bill this defendant says that the said complainant instituted an action at law in this court against the said Alexander R. Shepherd upon the said promissory notes, being cause at law No. 21867, and that the said Shepherd interposed a defense thereto, upon which issue was taken, and that the cause came on for hearing in the circuit court upon such issue, and that the said trial resulted in a verdict by the jury in favor of the defendant Shepherd upon which judgment was duly entered of record, and that said judgment stands unreversed, and this defendant therefore denies that the said notes are unpaid and unsatisfied.

Fifth. In answer to the averments contained in the fifth paragraph of said bill this defendant does not know whether
344 they are true or not, but has no reason to doubt the truth thereof; but this defendant is advised by counsel and believes and therefore avers that if any of the said lots were released, as in said paragraph alleged, the said complainant is chargeable with the value of the property so released and this defendant is entitled to have the said indebtedness reduced to the extent of such values so far as the equities are concerned between this defendant and the said complainant; and, further answering said paragraph, this defendant claims that the complainant is bound to proceed against the property still held by him as security before asserting any claim to the funds now in court and in the hands of said defendant Wilson arising from the said property in square No. 377.

Sixth. This defendant has no reason to doubt the truth of the averments contained in the sixth paragraph of the bill.

Seventh. As to the truth of the allegations in the seventh
345 paragraph of the bill this defendant has no knowledge as to the property included in the said assignment, but it says that it is advised by counsel and believes and therefore avers that any assignment of the said claim against the United States was absolutely null and void and of no effect as against this defendant.

Eighth. This defendant can neither admit nor deny the truth of the averments contained in the eighth paragraph of said bill, and therefore calls for strict proof.

Ninth. In answering the averments contained in the ninth paragraph of said bill this defendant says that it is admitted that the said Shepherd, by a paper writing bearing date on the 21st day of June, 1877, did undertake to assign a certain claim against the United States to the said complainant, but this defendant is advised by counsel and believes and therefore avers that the said
346 paper writing or assignment is utterly null and void because prohibited by an act of Congress in such case made and provided.

As to the other matters and things in said paragraph this defendant has no knowledge, and therefore can neither admit nor deny the same, but demands proof thereof.

Tenth, eleventh, twelfth, and thirteenth. This defendant admits that the averments contained in the tenth, eleventh, twelfth, and thirteenth paragraphs of the bill are true. In this connection this defendant shows to the court that in pursuance of the powers contained in the deed of trust mentioned in the tenth paragraph of the bill, made by said Bradley and wife to secure the purchase-money for said lot four (4), a sale was made of the said premises on the — day of ——, 1880, and that the net proceeds derived from said sale amounted to the sum of $——, leaving a balance due on the
347 promissory notes made by said Bradly and held by the Freedman's Savings and Trust Company of $——, which balance still remains unpaid and due to this defendant.

Fourteenth. As to the averments contained in the fourteenth par-

agraph of said bill this defendant admits that the said Shepherd did expect and claim from the United States the sum of $12,600.00 for the use of said premises during the period mentioned, but this defendant is advised by counsel and believes and therefore avers that if there was any such pledge or assignment thereof that such pledge or assignment was void.

Fifteenth. This defendant admits that the said Nathaniel Wilson received the money and draft as in said paragraph alleged, but it avers that the said draft for $1,800.00 was unlawfully indorsed by the said Bradley, Shepherd, Taylor, Cross, and Bacon, and
348 that such indorsement and a receipt of the proceeds of said draft were in violation of an injunction before that time issued by this court in cause No. 7523, in equity, to the bill of complaint in this cause restraining the said defendants, Shepherd, Taylor, Cross, and Bacon, from collecting or receiving any money or other thing of value from the United States on account of the lease of said lot four (4), in square No. 377, mentioned in the said bill of complaint, and because of the said injunction and order the said indorsement by the said parties was unlawful and null and void as to this defendant. This defendant further avers that, although the said Nathaniel Wilson and the said Andrew C. Bradley were not then parties to the said equity cause (No. 7523), they had actual notice that said injunction was in force, and the said Nathaniel
349 Wilson was a long time prior to such collection served with the same by leaving a copy thereof in his hands; that the said injunction or restraining order was issued on the 18th day of March, 1878, and was served upon the said Nathaniel Wilson on the twentieth day of April, 1878, and not on the 24th day of May, 1879, as in said paragraph alleged.

Sixteenth. Answering the sixteenth paragraph of said bill, this defendant says it admits that the said Wilson obtained the said draft as in said paragraph alleged, but, further answering, this defendant says that prior to the reception of the said draft and on the 24th day of May, 1879, the said Andrew C. Bradley, who had been appointed and had duly qualified as receiver in the said equity cause No. 5723, filed his petition as such receiver in said cause praying that the said Nathaniel Wilson be, and he was thereupon, by
350 an order of the court, made a party defendant in said cause.

On the 10th day of May, 1879, a decree in said equity cause No. 5723 was passed appointing the said Bradley receiver to collect the said claims against the United States for the occupation of the said property, and each and all the parties to the said equity cause No. 5723 and their agents and attorneys were restrained from applying for and receiving any money from the United States for the use of said premises, saving and excepting the rents maturing for a specified period, to wit, from the 6th day of June, 1877, to the 1st day of July, 1879, of which injunction the said Nathaniel Wilson had full notice before he applied for and received the said draft. This defendant insists that the said Wilson was bound by the said injunction and that his reception of the said draft was unlawful and void as to this defendant.

351 Further answering said paragraph, this defendant says that the said decree of May 10, 1879, by which said Bradley was appointed receiver, and containing the said injunction, was made upon the consent of the said Alexander R. Shepherd, and for greater certainty as to the said decree and its contents this defendant refers to the decree itself. Further answering the said paragraph, this defendant says, upon the advice of counsel, that the said defendants Bradley, Shepherd, Taylor, Cross, and Bacon had no lawful right to indorse the said draft for $3,475.00, and that the said Wilson had no lawful right either to receive said draft or to collect money thereon.

Seventeenth. In response to the averments contained in the seventeenth paragraph of said bill this defendant submits to the court that the conclusions of law contained in said paragraph are
352 erroneous, and this defendant hereby refers to the pleadings, proceedings, testimony, orders, and decrees in the said equity cause No. 5723, and submits to the court that this defendant is entitled to receive the money now in the hands of the court and in the hands of the said Wilson issuing out of the said lot four (4), in square No. 377; and it also submits that there are issues pending in said equity cause to which said plaintiff was, if he is not now, a party. Further answering the averments contained in said paragraph, this defendant says that on the 25th day of October, 1877, the commissioners of the Freedman's Savings and Trust Company, who were defendants in said equity cause No. 5723, filed therein a cross-bill in which they claimed affirmative relief and alleged the insolvency of the said Shepherd and said Bradley, and that on the 18th day of April, 1878, the restraining order hereinbefore men-
353 tioned, prohibiting the collection of the said rents, was issued, and that on the (12th) twelfth day of March, 1879, said commissioners presented their petition in the said cause, alleging the insufficiency of the said property to pay the debts and incumbrances outstanding thereon, and that on the 10th day of May, 1879, by the consent of the said Shepherd, the complainant in that cause (No. 5723, equity), the decree hereinbefore referred to and restraining the collection of rents was passed and recorded. In pursuance of said appointment by said decree the said Andrew C. Bradley qualified as such receiver, took possession of said property, collected the rents thereof, until he was directed, on the 28th day of February, 1880, to surrender the possession of said property to the commissioners of the Freedman's Savings and Trust Company. Such rents are still in his hands and constitute a part of the subject-matter of the controversy herein.

354 On the 25th day of June, 1879, the complainant in this cause, John W. Thompson, filed his petition in said cause, claiming the funds, and after due proceedings were had the said cause was, on the 31st day of October, 1879, referred to E. Carusi, Esquire, as a special auditor to, amongst other things, report upon the matter involved in the petition of Andrew C. Bradley, receiver, and the petition of John W. Thompson, and to report as to the proper distribution of the funds and draft in the hands of Nathaniel Wilson. In pursuance of that instruction the said special auditor

took all the testimony adduced before him in behalf of the said John W. Thompson and the commissioners aforesaid and returned the same on the 15th day of December, 1880, with his report as to such matters and things to this court, to which testimony and report reference is hereby made.

The said special auditor found, as matter of law, and re-
355 ported to this court that the said commissioners of the Freedman's Savings and Trust Company were and are entitled to a decree giving them the said fund in controversy in the said cause; certain exceptions were filed by the complainant in this cause (the said Thompson), but no order or decree has yet been made upon the validity and correctness of the said exceptions.

Eighteenth. In response to the averments contained in the eighteenth paragraph of said bill this defendant has no knowledge, and can neither admit nor deny the same, but submits to the court that it is immaterial, so far as this defendant is concerned, whether the claim be true or not.

Nineteenth. The averments contained in the nineteenth paragraph of said bill are admitted to be true.

Twentieth. As to the matters and things alleged in the twentieth paragraph of said bill this defendant has no knowledge, but
356 has no reason to doubt the truth thereof.

Twenty-first. Answering the averments contained in the twenty-first paragraph of said bill, this defendant submits to the court that if any such attachment, as therein alleged was issued and levied the rights and interest of the complainant Thompson through the same, if any he has, are subordinate to the lien and claims of the Freedman's Savings and Trust Company.

Twenty-second. The allegations contained in the twenty-second paragraph of said bill are admitted to be true.

Twenty-third. Further answering, this defendant submits to the court that John Jay Knox is now and was at the time the bill in this cause was filed commissioner of the Freedman's Savings and Trust Company, duly appointed and qualified according to law, and is in charge and possession of the assets of the Freedman's Savings and Trust Company in lieu and in place of John A. J. Cres-
357 well, Robert Purvis, and Robert H. T. Leipold, and is charged with the duty of settling the affairs of the said Freedman's Savings and Trust Company, and it is therefore submitted to the court and insisted upon that the said John Jay Knox is a necessary party defendant herein, and, furthermore, that all matters and things involved in this cause were and are involved in said equity cause No. 5723, wherein the said Shepherd, Taylor, Cross, and Bacon were complainants and the said Commissioners of the Freedman's Savings and Trust Company were defendants and in and to which the said complainant Thompson and the said Nathaniel Wilson were regularly made parties, and that the matters in controversy can and should be disposed of therein, and that the complainant has no right, pending the said equity cause, to institute and maintain these
358 proceedings; and, having fully answered the said bill of complaint, this defendant submits to the court that the said com-

plainant has no right to the relief by him prayed in his said bill, and that this defendant or its commissioner is entitled to the funds mentioned in said bill.

JOHN J. KNOX,
Comptroller of the Currency and
Commissioner of the F. S. & T. Company.

ENOCH TOTTEN,
Sol'r for F. S. & T. Co.

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

I, John J. Knox, being first duly sworn, do on my oath say that I am commissioner of the Freedman's Savings and Trust Company; that I have read the foregoing answer of said trust company by me subscribed and know the contents thereof, and that the same is true according to my information and belief.

JOHN J. KNOX.

359 Subscribed and sworn to before me this 28th day of July, 1881.

[SEAL.] THOMAS K. WALLACE,
Notary Public.

360 *Answer of the Defendant, George Taylor, to the Bill of Complaint of the Above-Named Complainant Filed Against Them and Others in the Above-Entitled Cause. Filed Dec.* 2, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN W. THOMPSON, Comp.,
vs.
ANDREW C. BRADLEY *et al.*, Def. } No. 7675.

For answer to said bill of complaint, or to so much thereof as they are advised it is expedient for them to make answer unto, this defendant says as follows:

1, 2. He admits the allegations in the first and second paragraphs of said bill, in regard to the residence of the parties, to be true.

3, 4, 5. As to the matters and things stated in the third,
361 fourth, and fifth paragraphs of the bill he has no personal knowledge and no interest in the subject-matter thereof.

6, 7, 8, 9. He admits the allegations of paragraphs numbered six, seven, eight, and nine to be true as therein set forth.

10, 11, 12. As to the matters and things set forth in the tenth, eleventh, and twelfth paragraphs of the bill he has no personal knowledge, but he believes the same are true as herein set forth.

14. He admits the allegations contained in the fourteenth paragraph of the bill to be true.

15. He admits that the defendant, Nathaniel Wilson, received from the Treasury Department of the United States a draft for $1,800 about the 30th of May, 1879, and that these defendants indorsed the same and redelivered it to said Wilson for the purpose, as they were advised, that said Wilson should pay the proceeds to the complainant, but as to the other matters and things set forth in the
362 fifteenth paragraph of the bill they have no personal knowledge.

16. He believes that it is true, as set forth in the sixteenth paragraph of the bill, that the defendant Wilson did, on or about the 16th of May, 1879, receive another draft from the Treasury Department of the United States for the sum of $3,475, and it is true that these defendants have not indorsed the same. This defendant has not been called upon to indorse the said draft for the reason, as he understands, that the same should first be indorsed by the defendants Bradley and Shepherd. This defendant is entirely willing to indorse the said draft when called upon or as the court may direct.

17. This defendant respectfully submits that he is not called upon to answer the allegations of the seventeenth paragraph of the bill further than he has already answered the sixteenth.

18. This defendant has no personal knowledge of the mat-
363 ters and things set forth in the eighteenth paragraph of the bill.

19. This defendant is not sufficiently advised as to the matters and things set forth in the nineteenth paragraph of the bill, and therefore he cannot now make answer to the same.

20, 21, 22. He has no personal knowledge of the matters and things set forth in the twentieth, twenty-first, and twenty-second paragraphs of the bill.

And, further answering, this defendant says that he has no individual interest whatever in the subject-matter of this suit, but is willing to do whatsoever the court may determine as proper in the premises.

And, further, the defendant, George Taylor, answering for himself, says that since the transaction set forth in the bill of complaint he resigned the trusteeship under the deed of assignment
364 therein referred to, and another person has been appointed in his place under the provisions of said deed, and this defendant is no longer acting as trustee.

GEO. TAYLOR.

I do solemnly swear that I have read the foregoing answer signed by me and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

Subscribed and sworn to before me this — day of October, A. D. 1881.

——.

365 *Answer of the Defendant, Nathaniel Wilson, to the Bill of Complaint of the Above-Named John W. Thompson Filed Against Him and Others in the Above-Entitled Cause. Filed Dec.* 6, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN W. THOMPSON, Comp.,
vs.
ANDREW C. BRADLEY, ALEX. R. SHEPHERD, NATHANIEL WILSON, *et al.*, Def. } Equity No. 7675.

For answer to said bill of complaint, or to so much thereof as he is advised it is expedient or necessary for him to make answer, this defendant says as follows:

He believes the allegations of said bill to be substantially true, and that the matters and things therein set forth are truly
366 and correctly stated, and he is willing that the complainant should have the relief prayed for by him.

Respondent further says that he was served with a preliminary restraining order some time prior to the 24th day of May, 1879, as will appear from the records in said case.

NATHANIEL WILSON.

I do solemnly swear that I have read the foregoing answer signed by me and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

—— ——.

Subscribed and sworn to before me this — day of ——, A. D. 1881.

—— ——.

367 *Decree Pro Confesso Against Andrew C. Bradley, Alex. R. Shepherd, Samuel Cross, & Peter F. Bacon. Filed Jan.* 11, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN W. THOMPSON, Comp.,
vs.
ANDREW C. BRADLEY, ALEX. R. SHEPHERD, *et al.*, Def. } Equity No. 7675.

It appearing to the court that the defendants, Andrew C. Bradley, Alexander R. Shepherd, Samuel Cross, and Peter F. Bacon, who have entered their appearance in the above-entitled cause, have not made answer to the bill of complaint therein, though the time limited for making such answer appears to have long since expired, it is ordered, adjudged, and decreed by the court this 11 day of January, A. D. 1882, upon the application of M. F. Morris, of coun-
368 sel for complainant, that said bill of complaint be taken as confessed by said defendants.

By the court: A. WYLIE.

369 *Order Setting Aside Decree Pro Confesso as to and Permitting Answers of Shepherd, Cross, Bacon, and Bradley, Defendants, Without Oath. Filed March* 11, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 11th day of March, 1882.

JOHN W. THOMPSON
vs.
ALEXANDER R. SHEPHERD *et al.* } Equity No. 7675.

Upon motion of Wm. F. Mattingly, solicitor for said defendants, and upon the written consent of the solicitor for the complainant indorsed upon the said answers, it is hereby ordered that the decree *pro confesso* heretofore passed in this cause against Alex. R. Shepherd, Andrew C. Bradley, Peter F. Bacon, and Samuel Cross, defendants herein, be, and the same hereby is, set aside, and leave is given to file the answers of said defendants without the oath of said defendants.

A. B. HAGNER,
Asso. Justice.

370 *The Answer of Andrew C. Bradley, One of the Defendants, to the Bill of Complaint of the Above-Named Plaintiff. Filed March* 11, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMPSON
vs.
SHEPHERD *et al.* } Equity No. 7675.

For answer unto so much of said bill as he is advised it is material for him to make answer unto he says—

1, 2. He admits the allegations of paragraphs 1 & 2 of the bill.

3, 4, 5, 6, 7, 8. He neither admits nor denies the allegations of the 3d, 4th, 5th, 6th, 7th, and 8th paragraphs, as they are mostly matters of record and matters not within his personal knowledge, and he calls for proof thereof.

9. He admits that he signed the instrument of writing re-
371 ferred to in the 9th paragraph and that it was executed by defendants Shepherd, Taylor, Cross, and Bacon; and he says that he signed it at the request of said Shepherd because the claim then pending was filed in the Court of Claims in his name, to the use of Shepherd and others; the defendant Shepherd had then been collecting rents in his own name from the Post Office Department since August 27, 1874, and there was no claim and demand of his or in his name to the use of Shepherd and others except the claim then pending in the Court of Claims.

10, 11, 12, 13. He admits the allegations of the 10th, 11th, 12th, and 13th paragraphs, except that he says that the first suit brought in the Court of Claims was brought in his name, to the use of Shep-

herd, and before the execution of Shepherd's deed to his trustees, and that the said cause was subsequently amended by making the defendants Taylor, Cross, and Bacon parties.

372 14. He does not admit the allegations of the 14th paragraph of the bill; and, to the contrary, he avers that he executed the said assignment as an assignment of the claim then pending in the Court of Claims.

15. He admits that said Nathaniel Wilson received a draft for $1,800 on or about the 3rd day of May, 1879, and he says that it was in payment of the judgment of the Court of Claims. He admits that said draft was drawn in the form alleged, and that it was indorsed by the several payees, and he admits that defendant Shepherd required at the time that 2½ per cent. of the proceeds should be paid to this defendant, and he says that the said requirement was made in consideration of services rendered by said Bradley to said Shepherd in connection with the said property and the said claim, and that at the same time the said Shepherd stated that he would indorse the said draft upon condition that the plaintiff should

373 release from the deed of trust to William Thompson two lots owned, respectively, by Richard Wallach, trustee for Mrs. Gideon, and by Samuel T. G. Morsell; that he does not know and does not admit that any other directions or instructions were given by said Shepherd at the time of indorsing said draft, and he calls for proof thereof. He denies that Wilson was prevented from paying over said proceeds of the draft by a notice and rule served upon him in cause 5723, equity, in this court on or about May 24, 1879, and he denies that he procured such notice or rule to be served, and he avers that in said cause a restraining order was issued in 1878 at the instance of the plaintiff therein, which was served upon said Wilson, and that when said draft was indorsed it was stipulated with said Wilson that the proceeds should not be paid over by him whilst said restraining order was in force, and he says that the order passed in said cause May 24, 1879, was an order making the said Wilson party thereto.

374 16. He admits that said Wilson has received another similar draft for $3,475, and that said draft has not been indorsed; and he avers that the parties to said draft and said Wilson are all restrained from collecting the money thereon by the orders and proceedings in said cause 5723, equity.

17. The matters and things contained in paragraph 17 are questions of law and call for no answer, but he denies that the conclusion is correct.

18. He neither admits nor denies the allegations of the 18th paragraph, as they are matters of record and matters not within his personal knowledge, and he calls for strict proof thereof if the same are material.

19. He admits that defendant Shepherd was insolvent in 1876, but upon information and belief he avers that he is now the owner of property more than sufficient to pay all of his debts; he admits that the property now in the hands of Shepherd's trustees is not sufficient to pay all of his debts, but avers that it is more than

375 ample to pay all of plaintiff's claim; he admits the other allegations of paragraph 19.

20, 21. The matters contained in paragraphs 20, 21 are matters of record, and he calls for proof thereof, though he is informed and believes that no writ of *fieri facias* has ever been issued upon said judgment.

22. He denies that he is the only authorized agent and attorney for defendant Shepherd in respect of the matters in controversy in said bill, and, to the contrary thereof, he says that before he went to Mexico, in 1880, the said Shepherd made and constituted him and William F. Mattingly his attorneys-in-fact, with full power to transact all business in his name; and he denies that he has power to receive and dispose of the proceeds, and that it is the purpose of said Shepherd and this defendant to collect the proceeds thereof and apply the same to their own uses and purposes.

And, having fully answered, &c.

A. C. BRADLEY.

376 Andrew C. Bradley, on his oath, says that he has read the foregoing answer by him signed and knows its contents, and that the facts therein stated of his own knowledge are true, and that those stated upon information received from others he believes to be true.

A. C. BRADLEY.

Subscribed and sworn to before me this 9th day of March, 1882.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

377 *The Answer of Alexander R. Shepherd, One of the Defendants, to the Bill of Complaint of the Above-Named Plaintiff. Filed Mar.* 11, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN W. THOMPSON
vs.
ALEXANDER R. SHEPHERD *et al.* } Eq. No. 7675.

For answer to said bill he says as follows:

1, 2. He admits the allegations of the 1st and 2nd paragraphs.

3. He admits that he made the notes described in the deed of trust to William Thompson, referred to in the 3rd paragraph of the bill, and that he executed the said deed of trust, but he denies that the indebtedness, the said notes, or the deed of trust are correctly set forth in said paragraph, as will appear by said deed of trust
378 recorded in Liber 712, folio 128, of the land records of the District of Columbia, to which he refers as part of his answer.

4. He admits that the second and third of said notes are held and owned by plaintiff, but he denies that they are unpaid and unsatis-

fied, except as to interest paid on the second note to March 10, 1875, and certain portions of the principal, amounting in the aggregate to the sum of $3,322.72, and that there is now due and payable $11,677.28, with interest on $8,000 from March 10, 1875, and on $3,677.28 from June 22, 1875, at eight per centum per annum until paid; and he says that he is informed and believes it to be true, and therefore avers that the plaintiff has collected other sums from the owners of property covered by said deed of trust in consideration of releases from said deed of trust which the plaintiff does not credit upon said notes and which aggregate $1,700 and more.

5. He admits that at divers times subsequent to the execu-
379 tion of said deed of trust the plaintiff, at his request, caused some of the lots of ground included in said deed of trust to be released, but that he denies that said releases were made upon his (defendant's) assurance that other and further security would be substituted therefore, and he denies that it is impossible for the plaintiff to realize anything from the security of said deed of trust, and he denies that he has led the plaintiff into complications, and avers that the plaintiff is a careful business man, and that he made the said releases cautiously and after due inquiry in the belief that the property retained and unreleased was ample security under said deed of trust, and that he was not mislead by defendant.

6, 7, 8. He admits that he made and executed the deed of trust of November 15th, 1876, but for its terms, provisions, and property conveyed he refers to the record of said deed in Liber 839, folio 226, of the land records of the District of Columbia as part of this answer.

380 9. He admits that he executed the paper writing dated June 21st, 1877, a copy of which is annexed to the bill of complaint as Exhibit No. 3, and that the trustees under his said deed of trust concurred in the assignment, and that defendant, Andrew C. Bradley, executed the assignment as a formal party, but he says that the said instrument, as to its terms, scope, purpose, and effect, speaks for itself, and he refers to the same as part of this answer, and he says that the said assignment was given to prevent the advertisement, sale, and sacrifice of the property remaining subject to the deed of trust to William Thompson, trustee, which the plaintiff was then threatening to have advertised and sold under the said deed of trust, and its object was to preserve said property from sale.

10, 11, 12, 13. He admits the allegations of the 10, 11, 12, and 13 paragraphs of the bill to be substantially correct, and he says
381 that the said purchase of said lot by said Bradley was made for this defendant as his agent, and that said Bradley subsequently conveyed the property and assigned the lease to him as alleged, and that before the said conveyance and assignment said Bradley had turned over to him all rents of said property collected, and he says that when the first suit was instituted in the Court of Claims it was in-instituted in the name of Andrew L. Bradley to the use of this defendant, and that subsequently it was so amended as to be to the use of said trustees; that the additional suit, for the years 1877 and 1878, was entered in December 1878, only a few days before the decision

of the Supreme Court of the United States was rendered in the first cause affirming the judgment of the Court of Claims therein.

14. He admits that he claimed in the first of said suits $4,200, rent for the fiscal year ending June 30, 1876, and that he claimed about
382 $8,000 in the second suit, as rent for the fiscal years ending June 30, 1877, and June 30, 1878. He denies that the claim was for the use and occupation of the said property in either of said suits, but that it was for rent reserved in the said lease. He says that at the time of the execution of the said assignment, to wit, on the 21st day of June, 1877, the rent for the fiscal years ending June 30, 1877, and June 30, 1878, had not accrued, and that there was no other claim and demand of A. C. Bradley to the use of this defendant and others, as described in said assignment, except the claim then pending in the Court of Claims for $4,200 rent for the year ending June 30, 1876; and he further says that no rents of said property except those embodied in the claim for $4,200, then pending in the Court of Claims, passed by his said deed of November 15th, 1876, to his trustees, but by said deed the right to the pos-
383 session of said property and the receipt of said rents and profits until default and sale was expressly reserved to him, as will appear upon reference to said deed, already made part of this answer, and by said deed this defendant covenanted that the rents, issues, and profits which should come into his hands should be used, managed, and applied by him solely for the interest, benefit, and advantage of the holders of the notes secured by said deed of trust; and he says that the effect of said assignment is a question of law to be determined by the instrument itself and its surrounding circumstances.

15. He admits that on the 3rd day of May, 1879, a draft for $1,800 in payment of said judgment of the Court of Claims was issued, and that it was received by Mr. N. Wilson, and that it was drawn as alleged, and indorsed by this defendant and the other payees, but he denies that he gave any instructions to said Wilson thereupon as alleged, except that he requested said Wilson to pay to
384 defendant Bradley two and one-half per centum of the proceeds as compensation in part for his services as attorney and agent for this defendant in connection with the said property and the rent thereof, and he says that said Wilson assented thereto, and he is informed and believes that the same was paid; and he avers and says that at the time of indorsing said draft he made the stipulation with said Wilson, who this defendant alleges was acting as attorney for said plaintiff in procuring said indorsements; that the said indorsement was conditioned upon the plaintiff's releasing a lot belonging to Mrs. Gideon and standing in the name of Richard Wallach, trustee, and a lot belonging to Samuel T. G. Morsell, both of which were partly included in the deed of trust to William Thompson, and had been in effect released by the plaintiff, according to the rule of the inverse order of alienation, by releasing other property under said deed of trust. He is informed that a
385 restraining order was issued in said cause, 5724, equity, and that it was served upon said Wilson at the instance of the

complainants in that cause long before the said draft was received by said Wilson, and that said Wilson was thereby restrained from paying over said money to the plaintiff in this cause; and he avers that at the time the said draft was indorsed the said Wilson agreed that he would not part with said money until said order should be vacated, and he denies that a restraining order was procured to be served upon said Wilson by defendant Bradley on or about May 24, 1879, and he avers that the order passed in said cause on that day was an order making the said Wilson party thereto, as will appear upon reference to the proceedings in said cause.

16. He admits that said Wilson received from the Treasury of the United States a draft for $3,475 for the use and occupation of
386 the said house, 915 E street N. W., for the years ending June 30, 1876, and June 30, 1877, and that the said draft was drawn payable in like manner as the preceeding draft for $1,800, but he does not know when the same was received by said Wilson, but he is informed and believes, and therefore avers, that the same was made out and received by said Wilson some days after the indorsement of the preceding draft, as hereinbefore alleged. He admits that the said draft has not been indorsed by the payees, and avers that by reason of the claim of the Freedman's Savings and Trust Company and the proceedings and orders passed in relation to said rents, passed in said cause 5723, equity, the said draft could not properly be indorsed or the proceeds paid over, and he avers that the said instrument dated June 27, 1877, is absolutely null and void and ineffectual to support any claim for relief in this cause in behalf of the plaintiff under section 3477 of the Revised
387 Statutes of the United States, and he claims the same benefit of said objection as if he had specially demurred to said bill upon that ground.

17. The allegations or matters and things stated in the 17th paragraph are questions of law only, and call for no answer from this defendant.

18. He admits that in cause No. 5433, equity, he was called as a witness, and that he testified before the special auditor, but he does not admit the other allegations to be true as alleged in paragraph 18, and says that the record of said cause and deposition must speak for itself, and he calls for strict proof thereof, if material to the issues involved in this cause and if the said evidence is admissable, and he denies that the said matters are admissable in evidence in this cause or material to the issues involved.

19. He admits that he was insolvent in the year 1876, but he denies that he is now insolvent. He admits that the property
388 now in the hands of the trustees may be insufficient to pay the entire amount of his debts, but he avers that it would be ample to pay the plaintiff's claim if so applied, and he admits that he has no property in the District of Columbia which can be taken in execution at common law, and he admits that he is temporarily residing in Mexico.

20. He admits that the plaintiff has recovered judgment against him in cause No. 20935, at law, for $4,000, but he denies that a writ

fieri facias has been issued upon said judgment or returned as alleged, and he says that the plaintiff filed no short copy of said judgment with his bill.

21. He admits that the plaintiff caused a writ of attachment to be issued upon said judgment and laid in the hands of said Wilson, and that said Wilson answered said writ, and that the said judgment is not paid; but he denies that the plaintiff has obtained
389 any lien upon said fund or draft thereby, or that the same can be made the foundation for any relief in this cause; and he says that the said bill is multifarious, and asks the same benefit of objection to said bill on that ground as if he had specially demurred to said bill therefor.

22. He denies that said Bradley is his only authorized agent and attorney in respect to the matters and things in controversy, and that said Bradley has a power of attorney to indorse the draft and receive and dispose of the proceeds thereof, and he says that said Bradley and William F. Mattingly are his attorneys-in-fact jointly, and they jointly are his agents and attorneys in all matters; and he denies that he and the said Bradley have formed any purpose as to getting possession of said draft or to collecting the proceeds thereof and applying them to their own uses and purposes; and he denies that the plaintiff has any legal right to the said draft or its proceeds; and, further answering said bill, he says that the cause of ac-
390 tion, if any there may be, arising to the plaintiff on account or by reason of the several allegations and complaints in his said bill contained did not accrue within three years before the said bill was filed, and this allegation the defendant makes in bar of the plaintiff's bill, and prays that he may have the same benefit therefrom as if he had formally pleaded the same; and having fully answered, &c.

WM. F. MATTINGLY,
A. C. BRADLEY, *Sol's for Def't.*
ALEXANDER R. SHEPHERD,
By WM. F. MATTINGLY,
A. C. BRADLEY, *Att'ys-in-Fact.*

The complainant waives an answer under oath in this case from the defendant, Alexander R. Shepherd, and agrees that the decree *pro confesso* heretofore taken against said defendant be set aside, and that this answer be filed.

M. F. MORRIS,
Sol'r for Complainant.

391 *Replication. Filed March* 23, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 21st day of March, A. D. 1882.

JOHN W. THOMPSON, Comp., *vs.* A. C. BRADLEY *et al.*, Def'ts. } Eq. No. 7675.

The complainants joins issue with the defendants on their several answers.

M. F. MORRIS,
Solicitor for Complainant.

392 *The Joint and Several Answer of Samuel Cross and Peter F. Bacon, Two of the Defendants, to the Bill of Complaint of the Above-Named Plaintiffs. Filed March* 19, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

JOHN W. THOMPSON *vs.* ALEXANDER R. SHEPHERD *et al.* } Eq. No. 7675.

For answer to said bill they say as follows:

1, 2. They admit the allegations of the first and second paragraphs of said bill.

3. They deny that defendant Shepherd made the two promissory notes described in the third paragraph, and that he executed the deed of trust to William Thompson to secure the payment of
393 the same, as alleged, and they say that said Shepherd was indebted to the plaintiff in the sum of $2,300 and made and delivered to him three several promissory notes, dated March 10, 1873, for said debt, which said promissory notes were secured to be paid by said deed of trust to William Thompson, and for a particular and true description of said notes and of said indebtedness they refer to said deed of trust, recorded in Liber 712, folio 128, of the land records of the District of Columbia, as part of this answer.

4. They do not know, but have no reason to doubt, that the plaintiff still holds the notes secured by said deed of trust that remain unpaid, and they do not know how much has been paid upon said indebtedness, and call for strict proof of the amount claimed.

5. They have no personal knowledge of the matters alleged in the 5th paragraph; they have been informed and believe it to be true that portions of said security were released from time to time
394 by the consent of plaintiff and at the request of defendant Shepherd, but they do not know upon what terms the releases were made or how much property or its value remains unreleased, and they call for proof of such allegations.

6, 7, 8. They admit the allegations of the 6th, 7th, & 8th paragraphs to be substantially correct, but prefer to refer to said deed and schedule duly recorded among the land records of said District in Liber No. 839, folio 226, as part of this answer as to the property, terms, and provisions specified in said deed.

9. They admit that said defendants, Shepherd and Bradley, executed the instrument of writing dated June 21, 1877, a copy of which paper is filed with the bill and marked "Complainant's Exhibit No. 3," and that these defendants and defendant Taylor signed the clause concurring in the assignment, as appears by the instrument, and they admit that defendant Bradley executed the same as a
395 formal party, but they say that, as to the terms and provisions and purpose of said instrument, they refer to the same as part of this answer.

10, 11, 12, 13. On information and belief they admit the allegations of the 10th, 11th, 12th, and 13th paragraphs.

14. They admit that the aggregate amount claimed by said Shepherd in his two suits was $12,600, but whether he expected it from the United States they do not know, and whether that sum was pledged by the said assignment they say is a question of law depending upon the construction and effect of the instrument itself, and they deny that they covenanted or agreed to apply said sum to the satisfaction of complainant's first demand, or that they did anything except concur in said Shepherd's act.

15. They admit that a draft for $1,800, drawn in favor of A. C. Bradley to the use of A. R. Shepherd, to the use of George Taylor and these defendants as trustees, was delivered to said Nathaniel
396 Wilson as attorney for said Shepherd, and that they indorsed the said draft, but they deny that they gave any instructions whatever to said Nathaniel Wilson as to the disposition of the proceeds of said draft, and upon information and belief they aver that said Shepherd indorsed said draft upon condition that the plaintiff should cause a release to be executed by William Thompson of certain real estate included in said deed of trust to said William Thompson, which said release has never been executed, and they aver that said draft was issued in payment of the judgment of the Court of Claims, and as to the other matters and things alleged in said paragraph 15 they have no knowledge, and if material they call for strict proof thereof.

16. They are informed and believe it to be true that said Nathaniel Wilson has since received from the U. S. Treasury another draft for $3,475 for rent of house 915 E street, as alleged, and
397 they therefore admit the fact, and they also admit that the said draft has not been indorsed by them or by the other payers, and they aver that an order of injunction passed in equity cause No. 5723 in this court restrains them and the said Wilson and the plaintiff in this cause, both of whom are parties to said cause, from collecting or receiving said money, and they refer to the proceedings in said cause as part of this answer.

17. The matters and things alleged in the 17th paragraph are matters of law and they neither admit nor deny the same.

18. They do not admit the allegations of the 18th paragraph to be true, and having no personal knowledge of the same they call for strict proof thereof if the same are material; and as to the effect of the said assignment they say that as matter of law, the said instrument not being under seal, whatever may have been
398 the intention of the parties was and is inoperative to transfer any rents not accrued at the time, and that the said assignment is absolutely null and void and of no effect, and they pray the same benefit of this objection as if they had specially demurred to to the bill of complaint upon that ground.

19. Upon information and belief they deny that the defendant Shepherd is now insolvent, although he was insolvent at the time said deed of trust to these defendants was executed, and they aver that said Shepherd has paid and satisfied the greater portion of his debts. They do not know what debts are outstanding and unpaid or what is the exact value of the property remaining undisposed of under said deed of trust, but they aver that it is of more value than the amount of plaintiff's claim, though not subject to execution at law, and they admit that said Shepherd is temporarily residing in Mexico.

399 20. Upon information and belief they admit that plaintiff has recovered judgment at law upon a note dated November 8th, 1876, for $4,000, in cause No. 20935, on the law side of this court, but they deny that a writ of *fieri facias* has been issued upon said judgment or returned *nulla bona* by the marshal, as alleged.

21. They admit that a writ of attachment was issued upon said judgment and served upon said Nathaniel Wilson as alleged, and that said Wilson answered the same, but as to said proceedings they refer to the records and papers in said cause, and they admit that the said judgment is wholly unpaid and unsatisfied, but they deny that the plaintiff has obtained any lien upon said fund or draft thereby, or that the same can be made the foundation for any relief in this cause, and they say that the said bill is multifarious, and they ask the same benefit of objection to said bill as if they
400 had specially demurred to said bill thereof.

22. They are informed and believe and therefore aver that said defendant Bradley and William F. Mattingly are joint attorneys for said Shepherd by power of attorney, duly executed to them by said Shepherd before he went to Mexico, and they therefore deny that said Bradley is the only authorized agent and attorney of said Shepherd in respect of the matters in controversy in said bill. As to the other matters and things charged in said paragraph 22 they are informed and believe that they are not, and therefore deny that they are, true.

And, having fully answered, &c.

SAMUEL CROSS.
PETER F. BACON.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol's for Def'ts.

Samuel Cross and Peter F. Bacon say that they have heard read the above answer by them signed and know the contents
401 thereof, and that the facts therein stated of their own knowledge are true, and that those stated upon information received from others they believe to be true.

——— ———.
——— ———.

Subscribed and sworn to before me this — day of March, 1882.
——— ———.

The complainant waives an answer under oath in this case from the defendants, Samuel Cross and Peter F. Bacon, and agrees that the decree *pro confesso* here-before taken against said defendants be set aside and that this answer be filed.

M. F. MORRIS,
Solicitor for Complainants.

402 *Order Consolidating Causes, Limiting Time for Taking Testimony, &c. Filed April* 11, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD
vs.
COMMISSIONERS OF THE FREEDMAN'S SAVINGS AND TRUST COMPANY } Eq., 5723.

and

JOHN W. THOMPSON
vs.
ALEXANDER SHEPHERD, THE COMMISSIONERS OF THE F. S. & T. COMPANY, *et al.* } Eq., 7675.

The above causes having been called up, on motion it is, this 11th day of April, 1883, ordered as follows, to wit:

First. That said causes be, and they hereby are, consolidated, but without prejudice in anything to the rights and interests of either *of* any of the parties in either of said causes.

403 Second. That the testimony heretofore taken in said cause of Shepherd *vs.* The Commissioners of the Freedman's Savings and Trust Company *et al.* (Eq. No. 5723) shall stand and be used so far as applicable in the consolidated causes.

Third. The parties may take such testimony in addition as they may deem proper, and the time for taking the same is hereby limited to thirty (30) days.

By the court:

D. K. CARTTER,
Ch'f Justice.

We consent to the above.

ENOCH TOTTEN,
For F. S. & T. Co.
M. F. MORRIS,
For John W. Thompson.
A. C. BRADLEY.
W. F. MATTINGLY,
For Shepherd.

404 *Replication. Filed April* 11, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 11th Day of April, A. D. 1883.

JOHN W. THOMPSON, Comp.,
vs.
ANDREW C. BRADLEY *et al.*, Def. } Eq. No. 7675.

The complainant, John W. Thompson, joins issue with the defendants.

M. F. MORRIS,
For Complainant.

405 *Evidence for Com's F. S. & T. Company Produced Before and Taken by Edmund Bailey, Examiner in Chancery. Filed July* 23, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD
vs.
COM'RS F. S. AND T. CO. *et al.* } Equity No. 5723.

and

THOMPSON
v.
SHEPHERD *et al.* } Equity No. 7675.

Consolidated.

406 In the Supreme Court of the District of Columbia, this Twelfth Day of April, 1883.

ALEXANDER R. SHEPHERD *et al.*
v.
JOHN JAY KNOX, Com'r, &c., *et al.*
} Equity No. 5723.

and

JOHN W. THOMPSON
v.
ANDREW C. BRADLEY *et al.*
} Equity No. 7675.

Consolidated.

To Messrs. M. F. Morris, H. H. Wells, Wm. F. Mattingly, Andrew C. Bradley, & Nathaniel Wilson, solicitors, &c.

GENTLEMEN: Please take notice that on Saturday, the 14th day of April, 1883, at the hour of 2 o'clock p. m., and at the office of Enoch Totten, Esq., 416 5th street northwest, Washington, D. C., I shall proceed in the above-entitled causes to take such evidence as
407 shall be adduced on behalf of the defendant, John Jay Knox, cammissioner of the Freedman's Savings and Trust Company. You are requested to be present and cross-examine the witnesses.

EDMUND A. BAILEY,
Examiner in Chancery.

Service acknowledged this 13th day of April, A. D. 1883.

M. F. MORRIS,
For J. W. Thompson.
NATHANIEL WILSON,
H. H. WELLS,
A. C. BRADLEY,
W. F. MATTINGLY,
For Shepherd et al.

408 In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD
v.
COM'S F. S. & T. Co. *et al.*
} Equity No. 5723.

and

JOHN W. THOMPSON
v.
ALEX. R. SHEPHERD, COM'S F. S. & T. Co., *et al.*
} Equity No. 7675.

Consolidated.

WASHINGTON, D. C.,
SATURDAY, *April* 14, 1883—2 p. m.

Met pursuant to notice hereto attached.

Present: Enoch Totten, Esq., counsel for com's F. S. & T. Co., and M. F. Morris, Esq., counsel for John W. Thompson.

At the instance of Mr. Totten examination adjourned until Wednesday, April 18, 1883, at two o'clock p. m.

EDMUND A. BAILEY,
Ex. in Chancery.

409 EXHIBIT E. T. No. 1. Edmund Bailey, Examiner in Chancery.

Trust. Alex. R. Shepherd *et ux.* to George Taylor *et al.* Recorded December 8, 1876, 2.30 p. m. Recorded in Liber No. 839, folio 226, *et seq.*

This indenture, made this 15th day of November, in the year eighteen hundred and seventy-six (1876), by and between Alex. R. Shepherd and Mary G. Shepherd, his wife, of the city of Washington, District of Columbia, of the first part, and George Taylor, Henry A. Willard, and Samuel Cross, of the same place, of the second part.

Whereas the said Alexander R. Shepherd is indebted to divers persons in divers sums of money and is desirous to secure the payment thereof by a conveyance of his property and effects for that purpose;

And whereas his unsecured debts, so far as the same are
410 known to him at this time, amount to about the sum of three hundred and ten thousand dollars ($310,000);

And whereas, in order that said unsecured creditors may have their evidences of indebtedness in a marketable shape and for the purpose of this trust, he has executed his certain promissory notes bearing even date with these presents, each for the sum of one hundred dollars ($100.00), and payable five years after date, with interest coupons attached, at the rate of six per cent., payable semi-annually after the expiration of the first year, said notes being equal in amount to the amount of his unsecured indebtedness, be the same more or less than said sum of $310,000, and being payable solely out of the proceeds of the property included in and conveyed by these presents;

And whereas the said parties of the first part are desirous to secure the payment of said notes and coupons when and as the same shall become due and payable, they therefore execute these presents:

411 Now, therefore, this indenture witnesseth: That the said parties of the first part, for and in consideration of the premises and the sum of five dollars ($5.00) to them in hand paid by the said parties of the second part at the time of the execution and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, conveyed, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, convey, assign, transfer, and set over, unto the said parties of the second part and the survivors and survivor of them, his heirs, executors, administrators, and assigns, all and singular the land, tenements, hereditaments, and appurtenances, stocks, promissory notes, debts,

choses in actions, claims, demands, property, and effects of every description, fully and particularly enumerated and described in schedule thereof, hereto annexed and marked Schedule "A,"
412 the same being and intended to be all the property and estate of every kind whatsoever of him, the said Alexander R. Shepherd, except his interest in the assets of the firm of A. R. Shepherd & Co.; to have and to hold all the property aforesaid of whatsoever kind hereby conveyed or intended so to be and every part and parcel thereof, with the appurtenances, unto the said parties of the second part and the survivors and survivor of them, his heirs, executors, administrators, and assigns, in trust, nevertheless, to and for the uses and purposes following, to wit, in trust to suffer and permit the said Alex. R. Shephard to remain in the possession and receive the rents and profits thereof until default be made in the payment of said promissory notes or any of said interest coupons; and upon the full payment of said promissory notes, with all interest, costs, and expenses, to release and reconvey all and sin-
413 gular the property aforesaid or so much thereof as may be undisposed of unto the said Alex. R. Shepherd, his heirs, executors, administrators, and assigns; but should default be made in the payment of said promissory notes or of any of said interest coupons, then the said parties of the second part, the survivors or survivor of them, are hereby empowered, and upon the request of the holder of any of said notes or interest coupons it shall be their or his duty, to sell said property at public auction at such time and place and upon such terms and after such public advertisement as they or he shall deem for the best interest of all parties concerned, and shall convey the property sold to the purchaser thereof in fee simple without any liability, to see to the application of the purchase-money, and out of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of three per cent. on the amount of said sale or sales;
414 secondly, to apply said purchase-money to the payment of whatever may then remain unpaid of the said notes and interest coupons to the time of said sale, whether the said notes shall be due or not; and, lastly, to pay the remainder, if any, to the said Alexander R. Shepherd, his heirs or assigns, and upon this further trust to make all such conveyances and transfers of said property or any portion thereof as they may be required to make by the said Alexander R. Shepherd for the purpose of perfecting and carrying out any settlement, sale, or exchange which the said Shepherd may make for the benefit of the creditors secured hereby. The said promissory notes to the amount aforesaid, and all such other promissory notes as aforesaid as it may hereafter be necessary to issue to provide for such other unsecured debts of the said Alexander R. Shepherd as during the existence of this trust may be ascer-
415 tained to have been created prior to the execution and delivery of these presents, shall be countersigned by said trustees, who shall keep a true and accurate account thereof, and the said Alexander R. Shepherd shall deliver the same to the said creditors in amounts equal to the amounts due them, respectively, all

differences in amount by reason of uneven sums to be mutually arranged between the creditors, respectively, and the said Shepherd. Said creditors are specified in Schedule B, hereto annexed, and the presents are executed upon this condition: That all the creditors of the said Alexander R. Shepherd whose debts are unsecured shall sign these presents and thereby consent thereto, and by signing the same said creditors do hereby agree to accept said promissory notes as aforesaid in full satisfaction of their respective claims, and do further release the said Alexander R. Shepherd from said indebtedness and from all claims and demands whatsoever; and the said
416 Alexander R. Shepherd does hereby covenant with the said parties of the second part, the survivors and survivor of them, for the use and benefit of the holders of the notes aforesaid secured hereby, that all the property conveyed by these presents and all the rents, issues, profits, and proceeds thereof which shall come into his hands shall be used, managed, and applied by him solely *of* the interest, benefit, and advantage of the holders of the notes aforesaid, and that the said parties of the first part will make all such other and further assurance in law as may be deemed requisite and necessary by the said parties of the second part for the purpose of carrying out the true intent and meaning of these presents at any time.

In case of the death, removal from the District, resignation, or refusal to act or accept the trust of either of the said parties of the second part or of any trustee hereunder — hereafter substituted
417 the other party or parties may fill the vacancy from time to time as the same may be necessary by any instrument of writing under his or their hands and seals, duly acknowledged and recorded in the land records of the District of Columbia, and the parties thus appointed shall be vested with the same interest and estate in the property conveyed hereby and clothed with the same powers and duties as though expressly named herein as the parties of the second part.

In testimony whereof the said parties of the first part have hereunto set their hands and affixed their seals on the day and year first hereinbefore mentioned.

ALEXANDER R. SHEPHERD. [SEAL.]
MARY G. SHEPHERD. [SEAL.]

Witness:
D. R. BELL.

We do hereby accept the foregoing trust.

GEO. TAYLOR.
SAMUEL CROSS.

Witness:
D. R. BELL.

418 DISTRICT OF COLUMBIA, *To wit:*

I, D. R. Bell, a notary public in and for the District aforesaid, do hereby certify that Alexander R. Shepherd and Mary G. Shepherd, his wife, parties to a certain deed bearing date on the fifteenth day of November, A. D. 1876, and hereto annexed, personally appeared before me in said District, they being personally well-known to me to be the persons who executed said deed, and the said Alexander R. Shepherd acknowledged the same to be his act and deed; and the said Mary G. Shepherd, being examined by me privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 15th day of Nov., A. D. 1876.

[SEAL.]

D. R. BELL,
Notary Public.

419 *Schedule Assets A.—Unencumbered.*

Sqr.	Lot.	Sqr.	Lot.	Sqr.	Lot.	Sqr.	Lot.	Sqr.	Lot.	Sqr.	Lot.
5	of 6	E.88	22	E. 88	47	557	22	1040	4	1083	10
36	19		23		48		23		5		11
40	10		24		49	673	11		6	1008	2
58	5		25		50		16	1042	7		3
	6		26		51				8		4
	7		27		52	675	241		9		14
	8		28		53		242		10		15
E. 88	S. 4		29		54		243		11		16
	5		30		55		244		12		17
	6		31		56		6 f't of 245		13		18
	7		32		57	891	18		14		19
	8		33	104	13		19		15		20
	9		34	173	13		20		16	98	*2
	10		35		14		21		17		
	11		36		15		22		18		
	12		37		20		23		19		
	13		38		21		24		20		
	14		39	442	46		25		21		
	15		40	509	Int.	940	15		22		
	16		41	557	16		16		23		
	17		42		17		17	1083	3		
	18		43		18		18		5		
	19		44		19	968	1		6		
	20		45		20	1040	½		8		
	21		46		21		3		9		

*Georgetown.

420 County-seat farm, 212 acres, 7th St. road, District of Columbia:

Lots.

1, Shepherd's subdivisions.
2, " "
3, " "
—
5, " "
6, " "
7, " "
—
9, " "
10, " "
11, " "
12, " "
13, " "
14, " "
15, " "
16, " "
17, " "
A.
B.
C.
D.
E.
F.
G.
H.
I.

33 lots Patterson, N. J., numbered 567 to 577, 558 to 582, and 923 to 937.

140 acres, Prince George's Co., Md.

1,600 acres, Westmoreland Co., Va.

Personal property:

Furniture in house No. 1019 Conn. ave.
Furniture in house No. 1023 Conn. ave.
Furniture in house No. 1705 K St.
Stock on farm.
1 share Isherwood farm.
2 Citizen's Build'g Ass.
16 Washington Club stock.
Stock Young Men's Christian Asso. ($4,000, par value).
Stock Am. Dist. Telegraph Co.
Vaux Roofing Co.
Potomac Mills Cement Co.
Judgment *vs.* Chronicle Publishing Co. ($4,700).
Court Claims on est. prop'y ($6,000).

421 *Schedule Assets A—Encumbered.*

Sqr.	Lots.	Sqr.	Lots.	Sqr.	Lots.		
101	37	322	C	374	of 7	673	12
164	B		D		9	Unfinished house on 10th St.	13
163	33		E	462	47		14
	34	323	1		46		15
	35		2		45		16
	37	377	4	W. 623	19		17
164	3	378	26		20		20
	24		sub 26	673	1		21
	25		27		2		22
	12		28		3		23
	18		29		4		24
218	62		30		5	43	*1
	63		31		6		*2
	64		{E. ½ of W. ½ 2}		7		
287	B	380	D		8		
	C	374	of 8 & 9	933, 937 & 941 H St.	9		
			" 8 & 9		10		

*Georgetown.
Bleak House dwelling, &c., country-seat, 53.22 acres.

422 *Schedule B.—Schedule of Creditors.*

Ansonia Brass & Copper Co.
Alexander, John.
Acker, N. & Son.
Boynton, S. C.
Bartlett, Robbins & Co.
Bruce & Cook.
Barker, Geo. M.
Bartlett, L. A.
Blackford, B. L.
Babcock, O. E.
Boyd, Rob't.
Baker, Arnold & Co.
Beymer, Bauman & Co.
Byrd, E. A.
Beveridge, D. W.
Birch, Henry.
Cromford & Hoffmann.
Cross, Sam'l.
Clephane, Lewis.
Childs, J. P., & Co.
Columbian Bank Note Co.
Clark, N. B.
Cook, H. D., Jr., & Co.
Clark & Given.
Carr, Wm. S., & Co.
Connelly, D. A.
Crossfield, Geo. R.
Connor, Woolley & Co.
Cook, J. J., trustee.
Clapp, A. M.
Collins, J. F.
Coe, E.
Cook, W. A.
Dennheller, S. P.
Dearing & Johnson.
Dwight, Geo. W., & Co.
Dowmar & Green.
Emmart, Loyd W.
Evans, John O.
Fugitt, N. B.
Fisher, Thos. J.
Filbert, L. S.
Flagg, Stanley G., & Co.
Godey, Mrs. W. H.
Gray & Noyes.
Gettier, H. L.

Hume, Thos. L.
Haden, Geer & Co.
Hill, G. W.
Hutchinson, H. M.
Hebner, M.
Huntley, Geo., & Co.
423 Hoffman, L. M.
Jones, Frank.
Joyce, Thomas.
Kilbourne, H.
Kelly, Moses.
Kirby, Thomas.
Libbey, J. & J. E.
Lewis, Thomas.
Morsell & Dearing.
Murdoch, W. C.
McGregor, John.
Moore, J. C.
Morgan, E. F., president.
May, F. P., & Co.
McGowan, M. A., & Co.
McGill & Witherow.
Mitchell, John T.
Montgomery, Jos. H.
Otto Dunker & Co.
O'Hare, Owen.
Pottier & Stymers.
Phœnix Iron Co.
Plowman, Thos. H.
Proctor & Morrow.
Barker & Sons, "workmen."
Rollhouse, Jr., P.
Robinson Bros. & Co.
Ridenour, M. H.
Walker Bros.
Robinson Bros.
Riley, Thos. W., & Son.
Reuter & Mallory.
Shepherd, Thomas M.
Second National Bank.
Smith, Daniel.
Sissen, Hugh, & Sons.
Spaulding, W. E., & Sons.
Shinn, R. A.
Shoemaker & Hertzog.
Sanger, W. P.
Shepherd, A. R., treasurer.
Smith, Birge & Co.
Schneider, C. A.
Schneider, C.
Tucker Manuf'ct'g Co.
Timiney, Timothy.
Thompson, J. W.
Towles, H. O.
Talty, Stephen.
Tarton, Jas. E.
Van Riswick; John.
Van Buskirk, J. M.
Willard, H. A.
Wright, G. M.
Waters, J. G.
Williams, Joseph.
Whyte & Overman.
Washington Brick Machine Co.
424 Watts, Geo., & Co.
Windsor & Ford.
West, W. H., & Bro.
Wall, William.
Young, T. G. (administrator).
Williams, Gen'l Robert.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 839, folio 226, *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., April 14, 1883.

[SEAL.] GEO. T. SCHAYER,
Dep. Recorder.

425 WASHINGTON, D. C.,
WEDNESDAY, *April* 18, 1883—2 p. m.

Met pursuant to adjournment.

Present: Mr. Totten, of counsel.

Mr. Totten offered in evidence certified copy of deed of trust from Alexander R. Shepherd *et ux.* to George Taylor *et al.*, dated Novem-

ber 15, 1876, and the same is marked "Exhibit E. T. No. 1" and herewith filed.

Thereupon Mr. Totten states that he has no further evidence to offer in behalf of the commissioners of the Freedman's Savings and Trust Co.

Adjourned *sine die*.

EDMUND A. BAILEY,
Examiner in Chancery.

426 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

Be it remembered that at an examination held on the 14th and 18th days of April, 1883, before me, in pursuance of notice first given to counsel for respective parties, the foregoing proceedings and evidence were had and offered in behalf of the defendant, The Commissioners of the Freedman's Savings and Trust Company, in the aforesaid causes of Shepherd *v.* Commissioners of the Freedman's Savings & Trust Company *et al.* and Thompson *v.* Shepherd and others, being consolidated causes, in equity, Nos. 5723 and 7675 on the docket of the supreme court of the District of Columbia.

EDMUND A. BAILEY,
Examiner in Chancery.

427 *Stipulation. Filed Oct.* 31, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SHEPHERD
v.
THE F. S. & T. Co. } Equity No. 5723.

and

JOHN W. THOMPSON
v.
ANDREW C. BRADLEY *et al.* } Equity, 7675.

It is hereby stipulated and agreed as a matter of fact that the following sums were paid to and received by the Freedman's Savings & Trust Company on account of the purchase-money and rates, to wit:

Cash payment	$1,500 00
Interest on notes	1,955 20
First note	2,400 00
Total	$5,855 20

ENOCH TOTTEN,
For Com's F. S. & T. Co.
WM. F. MATTINGLY,
A. C. BRADLEY,
For Shepherd et al.

428 *Order. Filed Nov.* 1, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEX. R. SHEPHERD
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.* } Equity No. 5723.

and

JOHN W. THOMPSON
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY *et al.* } Equity No. 7675.

It is, this 1st day of November, 1883, ordered that the above causes (consolidated) be heard in the general term in first instance.

By the court: MACARTHUR, *Justice.*

429 *Motion to Remand Causes to Special Term. Filed April* 30, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In General Term.

SHEPHERD *et al.*
vs.
THE FREEDMAN'S SAVINGS AND TRUST CO. *et al.* } Equity No. 5723.

THOMPSON
vs.
SHEPHERD *et al.* } Equity No. 7675.

Consolidated.

And now comes Alexander R. Shepherd and moves the court to remand said consolidated causes for the special term for want of compliance with rule 92 of the rules of practice of this court and for other reasons apparent upon the face of the record.

WM. F. MATTINGLY,
A. C. BRADLEY,
Sol's for Shepherd.

430 *Decree. Filed Dec.* 15, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

ALEXANDER R. SHEPHERD, Complainants,
vs.
THE COMMISSIONERS OF THE FREEDMAN'S SAVINGS & TRUST COMPANY, Defendants,
} Equity No. 5723.

and

JOHN W. THOMPSON, Complainant,
vs.
ALEXANDER R. SHEPHERD, *et al.*, Defendants.
} Equity No. 7675.

These causes having been consolidated under the terms of the order passed on the eleventh day of April, 1883, and having been argued by counsel and considered by the court, and in cause No. 7675 the court being of the opinion that the complainant therein, John W. Thompson, is entitled to the proceeds of the two drafts, the one for $1,800.00 and the other for $3,475.00, received by the defendant, Nathaniel Wilson, from the Treasury of the United
431 States, it is, this 15th day of December, 1884, ordered, adjudged, and decreed in said cause No. 7675 that the defendants, Andrew C. Bradley, Alexander R. Shepherd, George Taylor, Samuel Cross, and Peter F. Bacon, do indorse or cause to be indorsed the draft for $3,475.00, hereinbefore mentioned, now in the hands of the defendant, Nathaniel Wilson; and that thereupon the said defendant, Nathaniel Wilson, do forthwith proceed to collect the said draft from the United States and pay over to the complainant, John W. Thompson, or to his solicitors of record the proceeds thereof, and that said defendant Wilson do also forthwith pay over to said Thompson or his solicitors of records the sum of $1,200.00, the residue yet remaining in his hands of the aforesaid draft for $1,800.00, heretofore received and collected by him.

And in said cause No. 5723, the court being of opinion that the trustees of Alexander R. Shepherd, complainants therein, are entitled to the rents collected by Andrew C. Bradley, as receiver, and yet remaining in his hands, it is further ordered, adjudged,
432 and decreed that the amended and supplemental cross-bill filed therein be, and the same hereby is, dismissed, and that said receiver pay over to said trustees or their solicitors of record the sum of $787.50, beingt he amount collected by him, less the allowance made to him for his services, and that thereupon he be discharged from his receivership.

It is further ordered in cause No. 5723 that each party pay his own costs and that in cause No. 7675 the defendants, the trustees of Alexander R. Shepherd, and the commissioners of the Freedman's Savings and Trust Company do pay the costs of the suit.

From this decree the commissioners of the Freedman's Savings and Trust Company pray an appeal to the Supreme Court of the United States, which is allowed, and from so much of this decree as relates to said cause No. 7675 said Alexander R. Shepherd and said Samuel Cross, Peter F. Bacon, and George Taylor, trustees, pray an appeal to the Supreme Court of the United States, which is allowed.

By the court:

D. K. CARTTER,
Ch'f Justice.

433 *Consent to Investment of Funds in the Hands of Wilson to the Credit of the Cause in a Note of Wm. M. Dunn, with Collateral Security. Filed Feb.* 2, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

JOHN W. THOMPSON
vs.
ALEX. SHEPHERD *et al.* } 7675.

We hereby consent that Nathaniel Wilson may invest the amount in his hands belonging to the credit of this cause, $4,675, on a note made by Wm. M. Dunn, dated Jan. 17, 1885, payable to Return J. Meigs, clerk supreme court, D. C., and to the credit of this cause, payable April 17, 1887, with interest at 6 per cent., payable semi-annually, which note is secured by the following collateral: A note of C. M. Chester, dated April 17, 1883, payable April 17, 1887, for $7,876.31, with interest, payable semi-annually, at six per cent.,
434 which note is indorsed by Elisabeth Lanier Dunn to the order of Wm. M. Dunn, and by him indorsed to Return J. Meigs, and is secured by a deed of trust for $23,628.92 on original lots 15, 16, 17, and 21, in square 152, which property, by an abstract of title signed by the Real Estate Ins. Co. of the District of Columbia, appears to be free and unincumbered except by that deed of trust. The deed of trust is given to secure four notes, of which the note referred to above is one. The purpose of this consent is to put the money in Wilson's hands at interest.

Dated January 28, 1885.

ENOCH TOTTEN,
For Com'rs F. S. & T. Co.
H. H. WELLS,
For Compl't Thompson.
A. C. BRADLEY,
For A. R. Shepherd and His Trustees.

435 *Filed Dec.* 31, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 31st Day of Dec., 1884.

ALEXANDER R. SHEPHERD *et al.*
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY and HENRY W. CANNON, Comptroller of the Currency, &c., } Eq. No. 5723.

and

JOHN W. THOMPSON
vs.
FREEDMAN'S SAVINGS AND TRUST COMPANY, HENRY W. CANNON, *et al.* } Eq. No. 7675.

Know all men by these presents that we, The Freedman's Savings and Trust Company and Henry W. Cannon, Comptroller of the Currency, commissioner, &c., as principal, are bound unto the above-named Alexander R. Shepherd *et al.*, complainants, and John W. Thompson, complainant, in the sum of fifteen hundred dollars, to be paid to the said complainants and their executors or administrators, respectively; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 30 day of December, 1884.

Whereas the above-named Freedman's Savings and Trust Company and Henry W. Cannon, Comptroller of the Currency and commissioner, &c., have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Freedman's Savings and Trust Company and Henry W. Cannon, Comptroller, &c., shall prosecute their said appeal to effect and answer all damages and costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FREEDMAN'S SAVINGS AND TRUST COMPANY, [SEAL.]
By HENRY W. CANNON, [SEAL.]
Comptroller of the Currency and Commissioner.

Sealed and delivered in presence of—

——— ———.

The above bond is this day approved as a supersedeas, and the check of H. W. Cannon, commissioner, on the Treasurer of the United States, No. 680, dated Dec. 24, 1884, and made payable to the order

of the clerk of the supreme court of the District of Columbia, for the sum of $1,500.00, is taken as security with said bond, and the clerk is hereby directed to convert said check into money at once and to deposit the same in the registry of the court, to be disposed
436 of in accordance with the further order of the court.

December 31, 1884.

(Signed) D. K. CARTTER, *Ch'f Just.*

5th Min. Gen. Term, p. 139.

Filed Dec. 31, 1884.

R. J. MEIGS, *Clerk.*

437 *Filed May 16th*, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 16th Day of May, 1885.

ALEXANDER R. SHEPHERD *et al.*
vs.
THE FREEDMEN'S SAVINGS & TRUST COMPANY *et al.* } Equity No. 5723.

JOHN W. THOMPSON
vs.
THE FREEDMEN'S SAVINGS AND TRUST COMPANY, ALEXANDER R. SHEPHERD, *et al.* } Equity No. 7675.

In error.

Know all men by these presents that we, Alexander R. Shepherd, as principal, and Lyndon H. Stevens, are bound unto the above-named John W. Thompson in the sum of two hundred and fifty dollars, to be paid to the said John W. Thompson, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this ninth day of May, 1885.

Whereas the above-named Alexander R. Shepherd has prosecuted an appeal to the Supreme Court of the United to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Alexander R. Shepherd shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ALEXANDER R. SHEPHERD, [SEAL.]
By W. F. MATTINGLY &
A. C. BRADLEY, [SEAL.]
His Att'ys-in-Fact.
LYNDON H. STEVENS. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved May 16th, 1885.

D. K. CARTTER,
Ch'f Justice.

438 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 28th day of May, 1885.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 28 day of May, 1885.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 28th day of May, 1885.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Endorsed on cover: District of Columbia supreme court. No. 230. The Freedman's Savings and Trust Company, Henry W. Cannon, commissioner, &c., appellants, *vs.* Alexander R. Shepherd, John W. Thompson, *et al.* Filed 29th May, 1885. No. 256. Alexander R. Shepherd, appellant, *vs.* John W. Thompson. Filed July 27, 1885.

7-494

Supreme Court of the United States.

OCTOBER TERM, 1887.

Nos. 230 and 256.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY, *Appellant*,

vs.

ALEXANDER R. SHEPHERD *et al.*, } No. 230.

and

ALEXANDER R. SHEPHERD *et al.*,

vs.

JOHN W. THOMPSON. } No. 256.

Brief for Freedman's Savings and Trust Company, Appellant.

ENOCH TOTTEN,
For F. S. & Trust Co., and its Commisioner.

E. O. POLKINHORN, PRINTER.

Supreme Court of the United States.

OCTOBER TERM, 1887.

Nos. 230 and 256.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY, *Appellant*,

vs.

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ALEXANDER R. SHEPHERD *et al.*,

vs.

JOHN W. THOMPSON. } No. 256.

Brief for Freedman's Savings and Trust Company, Appellant.

These suits involve the conflicting claims of three parties, to a fund of $5,462.50, collected as rents from real estate covered by a deed of trust to secure certain notes owned and held by the Freedman's Savings and Trust Company.

The claimants are John W. Thompson, the appellees, the Freedman's Savings and Trust Company and Alexander R. Shepherd. The fund is in court.

The property consisted of a house and lot on E street between 9th and 10th in the city of Washington, and was known as 915 E street.

By an order dated April 11, 1883, the two causes were consolidated. (139).

Statement of Facts.

On the 16th day of June, 1873, by a deed bearing date on that day (51) the Freedman's Savings and Trust Company sold and conveyed to Andrew C. Bradley the property, out of which were collected the rents forming the object of the controversy in these causes, for the consideration of $18,500. A small part of the purchase money was paid in cash; for the balance of the purchase money Bradley made five promissory notes, dated on the 9th of June, 1873, and payable in one, two, three, four and five years from date. To secure the payment of these notes, Bradley executed and delivered a deed of trust, with power of sale, to John W. Alvord and George W. Stickney, by which he conveyed to them the same property; this deed bears date June 9, 1873, and was recorded June 18, 1873 (58). The deed to Bradley was recorded June 17, 1873 (52).

By a formal instrument in writing under seal, dated June 6, 1873, Andrew C. Bradley leased to the United States for the term of three years, from June 5, 1873, the same property, with a stipulation therein that the United States might renew the lease for the additional term of two years. The rent reserved was $4,200 per annum, payable quarterly (52). Under this lease the United States entered into possession of the house and lot, and continued in pos-

session. September 11, 1874, by a deed acknowledged and recorded on that day, but dated August 27, 1874, Bradley conveyed the property to Alexander R. Shepherd, the sum of $18,000 being expressed as the consideration. It is not so stated in this deed, but it is averred in the bill filed by Shepherd, that he assumed the payment of the outstanding notes secured on this property (3). It is also alleged that Bradley was acting in the transaction only as Shepherd's agent or trustee, and that Shepherd was the real owner (62, 81).

By an instrument in writing under date of Nov. 21, 1874, Bradley notified the Postmaster-General (54) that Shepherd had purchased from him (Bradley) the premises mentioned and so leased to the United States, and thereby undertook to "assign and transfer" to Shepherd the lease, and to empower him to collect the rents from the United States.

The note for $2,400.00 given by Bradley to the Freedman's Savings and Trust Company on account of the purchase-money, was paid at maturity, and the sum of $1,955.20 on account of interest was also paid. But in 1875 Bradley refused to make any further payments on the notes (44, 45).

On the 15th of November, 1876, Alexander R. Shepherd being indebted to sundry persons in the sum of about $300,000.00 executed three promissory notes for $100,000.00 each, payable in five years after date with interest, and to secure the payment of these notes and interest, he executed and delivered a deed of trust of the same date conveying to three trustees a large number of lots of ground and personal property, specifically described in said deed, and amongst the rest, the said lot on E street (142).

The deed purported to convey all his property except his interest in the firm of A. R. Shepherd & Co. The trustees named in the deed were Taylor, Willard and Cross. Peter F. Bacon by virtue of a provision in the deed, was substituted in lieu of Willard. (142.)

By the terms of the lease the payments of rent were made subject to appropriations, by Congress. By the "deficiency bill" for the fiscal year ending June 30, 1874, the sum of $4,200.00 was appropriated to pay the rent of this building (18 Stat., 144; 98 U. S., 108), and a like appropriation was made for the next fiscal year (18 Stat., 144; 98 U. S., 108). For the third fiscal year ending June 30, 1876, only $1,800.00 was appropriated (18 Stat., 367). Certain provisoes are found in this statute, coupled with the appropriation, which gave rise to the litigation terminated by the judgment of this court in *Bradley* vs. *U. S.*, (98 U. S., 104.) Appropriations were regularly made (19 Stat., 166, 316) at the rate of $1,800.00 per annum, for the use of the property, until the act providing for the fiscal year ending June 30, 1879, when only $1,500.00 was appropriated. (20 Stat., 203.) This latter sum was regularly appropriated afterwards. (21 Stat., 23, 235, 412).

The rent of the premises was paid by the United States according to the terms of the lease up to the 30th day of June, 1875, at the rate of $4,200.00 (61), but for the year ending June 30, 1876, payment was refused. Thereupón and on the 7th day of December, 1876, Bradley, the lessor, through his counsel, Nathaniel Wilson, Esq., presented his petition to the Court of Claims of the United States, to recover the rent for that year (59). In this case the Court of Claims rendered a judgment in favor of petitioner

for $1,800.00 (83), and an appeal was taken by the petitioner to the Supreme Court of the United States, where that judgment was affirmed. (98 U. S., 104).

On the 21st day of June, 1877, Bradley and Shepherd joined in a writing purporting to assign to one William Thompson, "the demand and claim of A. C. Bradley *to the use of A. R. Shepherd and others* against the United States for the use and occupation of the premises, No. 915 E street, northeast," and all the proceeds and moneys derived therefrom were, as alleged "pledged and made applicable to the payment" of a certain indebtedness therein mentioned. (20).

Default having been made in the payment of the interest and part of the principal of the purchase-money by Bradley, the trustee appointed in the deed of trust made by Bradley to secure the payment of the purchase-money, in pursuance of the directions of the Commissioners of the Freedman's Savings and Trust Company, and on or about July 11, 1877, advertised the premises for sale. (45.) Thereupon, and on the 2d day of August, 1877, (2) Shepherd exhibited his bill, in the court below, praying an injunction to restrain the threatened sale; the main ground assigned for the relief prayed, was an undetermined suit in equity by one McGann against the Freedman's Savings and Trust Company, its Commissioners, Shepherd and others, seeking to set aside the sale under which the Trust Company had acquired its title to the property in question. This was the cause determined in this court at its October Term of 1879, (*Clark* vs. *Trust Company.*, 100 U. S., 149.) Shepherd's trustees were joined with Shepherd as complainants, but Bradley was not made a party.

The bill also alleges that subsequently Bradley conveyed the property to Shepherd, and that Shepherd assumed the payment of the outstanding notes representing the purchase-money unpaid.

The commissioners of the Trust Company filed their joint answer (5), to this bill, and on the 5th of October, 1877, by leave of the court, filed their cross-bill for affirmative relief, alleging that Bradley had leased the property to the United States for an annual rental of $4,200.00, and that the United States had entered into and still maintained possession of the property; that the rents for the use of the premises had not been paid by the United States, except up to the 30th of June, 1875, and that for the time, since that date, the whole of the rent was due; that Bradley had instituted an action in the Court of Claims against the United States to recover the rents for one year $4,200.00, which suit was pending and undetermined; that Shepherd and Bradley were both insolvent; that the taxes in arrears against the property amounted to about $1,576.00, and that the property had become so much depreciated in value that it would not sell for enough to pay the balance of the purchase-money still due, and they prayed for an injunction against the complainants in the original bill, restraining them from collecting the rents due from the United States, or for the use and occupation of the premises, until the final determination of all the litigation, and that a receiver be appointed to collect the rents, and that the receiver have leave to prosecute this cause so pending in the Court of Claims, and for general relief. (8–10.)

On the 18th day of March, 1878, an injunctional order based upon the cross-bill of the commissioners

of the Trust Company and the other pleadings, and *by and with the consent of the counsel for the complainants given in open court* (12,) was passed by the court, restraining the complainants and their agents, attorneys and representatives from collecting or receiving any money from the United States, on account of the lease of the premises until the further order of the court. (10.) This restraining order was served on Nathaniel Wilson, Esq., the attorney for the petitioners, in the case then pending in the Court of Claims, on or about the 20th day of April, 1878. (20, 86.)

On the 21st day of December, 1878, Mr. Wilson, the attorney for Bradley, exhibited the second petition of Bradley in the Court of Claims for the rent for the two years from June 30, 1876, to June 30, 1878, claiming $8,400.00, according to the terms of the lease of June 6, 1873. (79.)

February 21, 1879, the commissioners of the Trust Company presented their sworn petition to the court, by which they complained that Shepherd, nothwithstanding the injunctional order of March 18, 1878, had collected the rents from the United States for about seven months, and praying that he might be compelled to pay into court the amount by him so collected. No answer was made to this petition, but after argument the prayer thereof was denied by the court, on the ground "that there had been no violation of the terms of said injunction order by said Shepherd." This order was made March 8, 1879.

On or about the 3d day of May, 1879, the judgment of the Court of Claims for $1,800 in favor of Andrew C. Bradley for the rents of the premises for

one year having been affirmed by this court, a draft was issued by the Treasury of the United States payable to the order of Andrew C. Bradley, for the use of Shepherd, &c., for $1,800.00, and was delivered to Wilson; this draft was about that date, endorsed by the payees, and the amount was paid to Wilson. But Wilson refused to pay over any part of it, because he had been restrained by the order of March 18, 1878 (85, 86, 20).

On the 12th day of March, 1879, the Commissioners again applied for the appointment of a receiver, (14), and thereupon afterwards, and on the 10th day May, 1879, and *on the consent of counsel for the complainants* in the original bill, the court passed an order appointing Andrew C. Bradley receiver in the cause, and he was directed to take charge of the property and to apply to the United States for and "to collect and receive the rents now due and hereafter to become due, whether included in judgments of the Court of Claims or special appropriations of Congress, *or in drafts issued by the Treasury Department of the United States, and whether in the hands of any of the parties to this cause or not*, for the use and occupation of the premises mentioned and described in said proceedings, * * * * *excepting, however, the rents accrued and to accrue from the 6th day of June*, 1878, *to the 1st day of July*, 1879, *which have been or are to be collected and received by the said Alexander R. Shepherd or his assigns*" (16). It was also ordered and decreed that "all the parties to the cause be and each of them, *their respective agents and attorneys*, are hereby enjoined and restrained from applying for or receiving any moneys due or to become due, on account of the

use and occupation of the premises," with the above exception.

On the 24th day of May, 1879, on the petition of Andrew C. Bradley, the receiver, an order was passed (17) making Nathaniel Wilson a party defendant, in the cause, and to this petition Wilson filed his answer on the 25th day of June 1879 (17), admitting that he had received $1,800.00 in cash and also a Treasury draft for $3,475.00 from the United States for rents accruing for the property leased from Bradley and averring (20) that he held the same subject to the order and direction of the court. He also alleges that he would have paid the same over to John W. Thompson had it not been for the restraining order served on him on the 20th day of April, 1878 (20,), and sets out the assignment made by Bradley and Shepherd to Thompson, dated June 21, 1877.

[This petition of Andrew C. Bradley of May 24, 1879, is not in the record and after careful search and inquiry cannot be found.]

On the 25th of June, 1879, John W. Thompson intervened in the cause by petition in which he adopted the averments of fact in Wilson's answer and prayed among other things, that the order making Wilson a party defendant be rescinded, and that Wilson be required to pay over to him the funds in his hands. To this petition Bradley as receiver filed an answer under oath (22) in which he avers that the assignment relied upon by Thompson was intended to cover the amount involved and which might be recovered in the action then pending in the Court of Claims, and not more.

On the 28th of June, 1879, Bradley, as receiver, applied by petition to the court for an order requir-

ing Wilson to deliver to him, as receiver, the Treasury draft for $3,475.00, alleging that it had been delivered to Wilson by mistake, and after he had notified the Treasury Department of his appointment as receiver; that Wilson was called upon by the proper authorities of the Treasury Department to return the draft, and that he had refused to do so (25).

On the 30th of June, 1879, the matters involved in these several petitions were argued by counsel, and the prayers of each and all of them were denied (26).

On the 31st day of October, 1879, the cause was, by consent of counsel for the Trust Company and for Thompson and Wilson, referred to a special auditor to take testimony and report as to the proper distribution of the funds and drafts in the hands of Nathaniel Wilson (30).

On the 17th of January, 1880, on motion of the Trust Company, the restraining order granted on the original bill on the 2d day of August, 1877, was dissolved (31), and on the 28th of February, 1880, on the petition of the commissioners of the Trust Company, showing that a sale had been made under the powers in the trust deed made by Bradley to secure the purchase money, an order was made requiring the receiver to give possession to the commissioners, and referring the cause to the same special auditor to state the account of the receiver, and to return it, with his report on the former order in the cause (32).

On the 30th of October, 1880, John W. Thompson filed his second petition in the cause (34) alleging that he had on the 8th day of April, 1880, recovered a judgment at law against Alexander R. Shepherd and that an execution had been issued thereon

and returned unsatisfied ; that the judgment was for a part of the debt to secure which the assignment of June 21, 1877, had been made, and that an attachment had been served upon Wilson, to reach the funds in his hands. The prayer of the petition was that it might be referred to the Special Auditor to be disposed of with the matters in his first petition.

December 15, 1880, the special auditor filed his report (35) with the testimony and exhibits produced before him. From this report it appears that Andrew C. Bradley, the receiver, appeared before the auditor and presented his accounts showing that he had collected rents from the United States, as receiver, for the use of the premises, the gross sum of $875.00 (94, 39) and the net amount in his hands was $787,50, and the whole fund for distribution after making all allowances, is $5,462.50. This sum he awarded to the Freedman's Savings and Trust Company.

On the 21st day of February, 1881, an act of Congress became a law substituting the Comptroller of the Currency in lieu of the three Commissioners theretofore charged with the settlement of the business of the Freedman's Savings and Trust Company, and providing for the substitution of such officer in pending causes, and John J. Knox was substituted as such Commissioner in this cause. (21 Stat., 326.)

On the 13th April, 1881, Thompson filed a motion praying leave to withdraw his petition in the cause, and for leave to file a new and separate bill (100.)

To the report of the special auditor exceptions were filed in behalf of Thompson, and also on behalf of the complainants in the original bill ; that is, Shepherd and his trustees (39, 40). At the same time the counsel for Shepherd filed a motion asking the

court to vacate the order of reference to the special auditor, because that order was made without notice to them, and because process had not been issued on the cross-bill to the parties, and no appearance or answers had been entered or filed (40). Thereupon process was issued (97) to the complainants in the original bill, and a demurrer was filed to the cross-bill by them (101). One of the grounds of demurrer was that Andrew C. Bradley should have been made a party in the cross-bill, and thereupon the court allowed the demurrer and authorized the Commissioners of the Trust Company to amend and supplement the cross-bill, and also to bring in Bradley as a defendant in the cross-bill (103).

Accordingly, on the 22d of November, 1881 (104), the Commissioner (John J. Knox, who, in pursuance of a special statute, become Commissioner in lieu of the three former Commissioners) filed a cross-bill amendatory and supplemental to the first cross-bill, Andrew C. Bradley, in pursuance of the suggestion in the demurrer of Shepherd and his assignee, was brought in as a defendant in this cross-bill, as was Wilson, who had been before made a party defendant in the cause. It was alleged that Shepherd had been allowed certain rents by way of consideration for the appointment of a receiver, and that Wilson had received $4,675.00 in cash and in the Treasury draft, and that the property had been sold under the Bradley deed of trust, and that after applying the net proceeds of the sale to the debt there was a deficiency of $11,466.13. To this supplemental and amendatory cross-bill Shepherd and his trustees and Bradley filed a joint and several answer (107).

On the 13 day of April, 1881, Thompson filed his original bill (112) in a new suit in which he made Bradley and Shepherd and his trustees, Wilson and the Trust Company defendants, and subsequently made Knox, Commissioner a defendant (112). This bill sets out the debts due him from Shepherd and reiterates his claims under the assignment of June 21, 1877, and also his judgments at law against Shepherd; that executions had been issued, which had been returned unsatisfied and that attachments had been secured upon Wilson. All the defendants to this new bill answered (121 to 138).

On the 11th of April, 1883, (no action having been had on the exceptions to the report of the special auditor) an order was made by the Court consolidating the two causes (139) without prejudice to the rights of any, and the testimony taken in the first cause was made available so far as applicable in the consolidated causes. It was also ordered that any of the parties might take such further testimony as they might deem proper within thirty days. There was no other testimony taken except that Shepherd's trust deed of Nov. 15, 1876, (142,) was put in evidence by the Commissioner of the Trust Company.

It appears from the testimony adduced before the special auditor that the property on E street was sold by the trustees in the Bradley trust made to secure the purchase money, on the 16th day of February, 1880, (46,) and after the net proceeds were applied to the debt secured thereby, a balance of $11,466.13 remained unpaid (47.)

It also appears that Wilson was employed by Shepherd to institute the actions in the Court of Claims (59,83) and that he acted all the way through as the at-

torney for Shepherd, and that he was not the attorney for Thompson. (83, 19.)

It also appears that the indebtedness from Shepherd to Thompson consisted of two promissory notes made by Shepherd, payable to the order of Thompson, one for $7,000.00 and the other for $8,000.00, payable in two and three years after date with interest at the rate of eight per centum per annum (91, 92). These notes were secured by a deed of trust to William Thompson on lots in square 164 (90), and constitute the debt intended to be additionally secured by the assignment of June 21, 1877. Much of the property conveyed by the trust deed to William Thompson was released gratuitously by Thompson, without the payment of any consideration (90).

On the 1st day November, 1883, it was ordered by the Special Term that the causes, as consolidated, be heard in the General Term of the court below in the first instance (150), and on the 15th day of December, 1884, after argument, a final decree was passed by the General Term (151), by which all the funds in the hands of Wilson were directed to be paid over to Thompson, and the amount collected by and in the hands of Bradley was directed to be paid to Shepherd. From this decree the Commissioner and the Freedman's Savings and Trust Company and Shepherd appealed to this Court.

Assignment of Error.

In behalf of the Freedman's Savings and Trust Company and its Commissioner, error is assigned as follows:

1. The court erred in awarding any of the said fund to John W. Thompson;

2. The court erred in awarding any of the said fund to Alexander R. Shepherd ;

3. The court erred in not awarding all of said fund to the Freedman's Savings and Trust Company and its commissioners ;

4. The court erred in holding that the assignment by Bradley to Shepherd of the contract of lease with the United States was valid, and gave Shepherd an interest in the rents accruing from the United States ;

5. The court erred in holding that the assignment to Thompson of June 21, 1877, signed by Bradley and Shepherd was valid and effectual to transfer a claim against the United States.

Points and Authorities.

I.

The assignment of June 21, 1877, for Thompson's benefit is wholly void.

1. The attempted transfer to Shepherd of the lease made by Bradley to the United States, dated June 6, 1873, (52) is void. This lease was a contract between Bradley and the United States and any transfer thereof is in violation of section 3,737 of the Revised Statutes. That section is in the words following, to wit :

"No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States."

See *Wheeler* vs. *U. S.*, 5 Court of Claims, 504;
McCord vs. *U. S.*, 9 Court of Claims, 156;
Francis vs. *U. S.*, 11 Court of Claims, 638.

This being the correct view of that statute, Mr. Shepherd took nothing by the attempted transfer of this contract. The only assignment of this lease found in the record, and the only one there is, is the letter to the Postmaster General, dated Nov. 21, 1874, and signed and sealed by Bradley. (54.) This assignment is also void under section 3477, Revised Statutes.

2. The assignment, dated June 21, 1877, (20) is an attempted assignment of a "claim" against the United States, and is therefore void. Such assignments are forbidden by section 3477, of the Revised Statutes. This statute so far as it is necessary to state it, is as follows:

"All transfers and assignments made of any claim upon the United States, or of any part of it or share thereof or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof, shall be absolutely null and void."

United States vs. *Gillis*, 95 U. S., 407;
Erwin vs. *United States*, 97 U. S., 392;
Spofford vs. *Kirk*, 97 U. S., 484.

To avoid the consequences of this prohibitory statute, counsel for Thompson endeavor to bring the case within the exception established by this court in the case of *Goodman* vs. *Niblack*, (102 U. S. 556). But there is no likeness between the cases. There the owner of the claim made a general assignment for the benefit of his creditors, which included all his rights, credits, effects and property of every description; and it is asserted here that Shepherd did

the same thing. There are several answers to this argument. In the first place the assignment ot Thompson received no vitality from Shepherd's signature ; he owned no interest in the claim. The sale by Bradley of the *contract* with the Post Office Department as well as his *claim* against the United States for rents, was prohibited by the two statutes above cited and, therefore, Shepherd had no interest in the rents, and his signature was a mere perfunctory act ; the "claim" was still owned by Bradley. In the next place, Thompson is not asserting a right under the trust created by Shepherd's deed of November 15, 1876, (142). He rests his pretensions solely on the special assignment of June 21, 1877. It can not therefore be said that this paper is a "general assignment for the benefit of creditors," so as to fall within the exception pointed out in *Goodman* vs. *Niblack*. On the contrary, it clearly falls within the rule of *Gillis* vs. *United States*, and *Spofford* vs. *Kirk*, and finally, the trust deed made by Shepherd was not a "general assignment" for the benefit of his creditors. It was a deed of trust substantially in the form in common use in this District to secure debts. It does not convey *all* Shepherd's property ; it excepts expressly "his interest in the assets of the firm of A. R. Shepherd & Co." What this excepted interest may have been we are not informed ; these assets of A. R. Shepherd & Co., for aught that is disclosed by this record, may have been of more value than all the property encumbered by the deed. Further than this, the deed declares that Shepherd shall "*remain in possession, receive the rents and profits thereof until default be made in the payment of said promissory notes or*

any interest coupons," at that date, there could have been no default; and so far as we know from this record there never has been a default. This paper was executed about seven months after the trust deed was made and there could have been no more than six months, interest overdue.

Again, in addition to retaining possession and control of all the property, as above shown, the deed gave Shepherd full control of the trustees; they were bound "*to make all such conveyances and transfers of said property or any portion thereof as they may be required to make by the said Alexander R. Shepherd for the purpose of perfecting and carrying out any settlement, sale or exchange which the said Shepherd may make for the benefit of the creditors secured hereby.*" Here are features wholly inconsistent with the idea of a "general assignment for the benefit of creditors," that is to say, exclusive possession, unlimited power of disposal, and power to command the assignees. For these reasons, the case falls within the principle of *Spofford* vs. *Kirk*, and not that of *Goodman* vs. *Niblack*.

2. *Even if the supposed assignment is valid it transferred no more than the amount recovered in the then pending action in the Court of Claims, that is* $1,800.00.

The instrument is dated June 21, 1877 (20), and it may be stated thus: "In consideration of the indebtedness described in the deed of trust to William Thompson * * * the demand and claim of A. C. Bradley *to the use of A. R. Shepherd and others* against the United States * * * and *all the proceeds thereof* * * * are hereby pledged

* * * to the payment of said indebtedness * * *; and it is hereby covenanted and agreed that any draft or check issued in payment or part payment of *said claim* shall be endorsed and delivered to the trustee * * * and the proceeds thereof, less all proper *costs and charges*, be applied to the payment of said indebtedness * * * ." (20).

This language plainly refers to the pending action in the Court of Claims. That action was instituted on the 6th day of December, 1876. There was a dispute about the amount of rent to be paid, as Thompson well knew (92). There was rent due June 21, 1877, according to the terms of the lease (53), for only one quarter in addition to that sued for, which, in view of the dispute, was not to be collected, of course. The "claim" is described as being "to the use of A. R. Shepherd *and others*," thus closely following the title of the cause in the the Court of Claims (59); there was no other claim of Bradley "to the use of A. R. Shepherd *and others*." The "others" referred to were the trustees named in Shepherd's deed and in the cause, but they had no right to the rents then uncollected, because the trust deed to them provided that Shepherd should collect and appropriate them until default was made in payment of the notes or interest coupons. If the assignment was intended to cover anything beyond what was involved in the cause in the Court of Claims, it would have been the most natural and easy course to have so stated it in writing. The words "costs and charges" are peculiarly applicable to a cause in court. Mr. Bradley testifies very positively that the intention was to transfer the "claim" involved in the pending action, and noth-

ing more (95), and Thompson, in effect, does not differ (89) with him.

3. The supposed transfer only undertook to pledge the "claim" as additional security for a debt already secured by a deed of trust on lots in square 164 (85). Much of this property was released—"a great portion of it"—by Thompson, without any corresponding payment. In a dispute between creditors, Thompson would be required, by an equity court, to give credit for the value of such lots so gratuitously released before he would be allowed to call upon the additional security held by him, and solely relied upon by the Trust Company. This would be more especially equitable when the Trust Companyis endeavoring to collect the *purchase money* for the property.

II.

Shepherd claims these rents as the assignee of the mortgagor, in possession by a tenant, and he admits he assumed the payment of the outstandiug notes.

If it be true that the statutes prohibit the assignment of any *claim* against the United States, and any transfer of any *contract* with the United States, then Shepherd's pretensions rest upon no better foundation than those of Thompson. If Bradley and Shepherd jointly could not transfer this "claim" against the Government to Thompson, Bradley, for a stronger reason, could not assign it to Shepherd. Bradley not only attempted to assign a "claim" against the Government which is forbidden by the statute, but he attempted to transfer to him a "control" which is also forbidden by another and differ-

ent statute. The "power of attorney" or "other" authority sent by Bradley to the Postmaster-General (54), dated November 21, 1874, authorizing Shepherd to collect the rents is declared void by statute.

If there is any party to this suit, other than the Trust Company, entitled to make claim to the fund in court, it is Bradley. He is the mortgagor and the United States was his tenant in possession. He does not now and never did claim any part of the fund. He has acquiesced in the decree by omitting to appeal, and is bound by it.

Shepherd originally appealed to the Court for equity but did not offer to do equity. He was entitled to protection against evil consequence which might result from the McGann suit, and it was readily conceded to him. But he was not entitled to go on collecting and appropriating to his own use, the profits of the property in dispute; he would have been entitled to reimbursement of the money paid to the Trust Company in the event of an adverse determination in the McGann case, but he would have been entitled to no more. It was right and equitable to all parties that the income of the property should be detained by the Court, to be equitably disposed of at the end of the litigation, and the Court, in a half-hearted way attempted to do this. It issued an order restraining Shepherd from collecting any rents, but when Shepherd disregarded the order the Court refused to compel him to account for the rents which he had wrongfully and contemptuously collected. But it must be said in his favor that in view of this impropriety and to make amends for it, he came into Court, by counsel and apparently *for the valuable consideration of being permitted to re-*

tain the money so collected, and to collect the rents for an additional period, so as to give him the rents from June 6, 1878, *to July* 1, 1879, (*thirteen months*) *he consented that all the rest and residue of the rents within or in arrear, due or to become due whether involved in litigation or not should be sequestered and held to abide the final determination of the litigation.* The language of the order appointing the receiver is very comprehensive.

The receiver was directed "to take charge of said property and to apply to the Postoffice Department of the United States for and collect and receive *the rents now due and hereafter to become due, whether included in judgments of the Court of Claims or special appropriations by Congress or in drafts issued by the Treasury Department of the United States and whether in the hands of any of the parties to this cause or not.*"

If Shepherd, then, had any rights, either legal or equitable, in these rents, he parted with them by this consent decree. *It is an estoppel of record*, and he cannot now be heard to say that these rents belong to him.

After this decree Shepherd seems to have gone to Mexico to be absent indefinitely.

III.

If Shepherd ever obtained any rights, either legal or equitable in and to the rents of the property, they were sequestered by the injunctional order passed by the court, March 18, 1878, *on the consent of Shepherd's counsel, and the fact that a receiver was not then appointed is immaterial, and the order covered*

and bound all the rents actually uncollected at that date.

1. It has been argued in behalf of Shepherd, and will be again, probably, that because a receiver was not appointed that no effectual sequestration of the rents was made, and that therefore they belong to Shepherd as the mortgagor. In other words, it is contended that an equity court, by an injunction without the appointment of a receiver, cannot effectually secure the rents and profits of a mortgaged estate which is insufficient to pay the mortgage debt, pending litigation.

It is submitted that such a proposition cannot be successfully maintained. An equity court in such a litigation may secure and detain the income of the estate by any means conducive to that end, and consistent with the circumstances of the case. The appointment of a receiver in this case, would have been an idle and needless ceremony as a compulsory remedy. *The property was in the possession of the United States as tenant of the mortgagor, and the Government could not be compelled by the court, either to vacate the premises or to attorn to the court's receiver.*

In addition to this, *the rents were certainly as safe in the hands of the United States as in the hands of a receiver. There was, therefore no need of a receiver.*

This Court, as late as the present term, has declared that in a case where the rents properly belonged to the mortgagee as against the mortgagor in possession, the fact that a receiver was not appointed was immaterial. (*Dow* vs. *R. R. Co.*, 124 U. S., 563.) In *Teal* vs. *Walker* (111 U. S., 251), this Court inti-

mates that it is sufficient if "effectual steps" be taken to sequester the rents; and in *Fosdick* vs. *Schall* (99 U. S., 253), it declares that possession must be taken by the mortgagee "*or something equivalent*" must be done; in *Gilman* vs. *I. & M. Tel. Co.* (91 U. S., 617), it is intimated that possession must be taken "or the proper judicial authority should interpose." See *Gibbs* vs. *R. R.*, 15 Shaw (S. C.,) 518; S. C., 9 *Am. & Eng. R. R.*, cases 723; In Re fifty-four Bond, 9 *A. & E. R. R.*, cases, 736.

In *Fosdick* vs. *Schall* (99 U. S., 251), this Court says:

"The possession taken by the receiver is only that of the court, whose officer he is, and adds nothing to the previously existing title of the mortgagees. He holds, pending the litigation, for the benefit of whomsoever in the end it shall be found to concern, and in the meantime the court proceeds to determine the rights of the parties upon the same principles it would if no change of possession had taken place."

The commencement of a suit in equity to enforce a surrender of possession to the trustees under the mortgage, in accordance with its terms, is a demand for possession, and if the trustees are then entitled to possession, the company must account from that time. "From the time of the bringing of the suit *the company itself is to be treated in all respects as a receiver of the property*, holding for the benefit of whomsoever, in the end, it should be found to concern, and liable to account accordingly." *Dow* vs. *Memphis R. R. Co.*, 124 U. S., 653.

The trust deed in this cause (56) conveys by apt

words a fee-simple title to the trustees, which, without other words, would carry with it the full possession; by a stipulation in the deed (57), the vendor is expressly authorized "to use and occupy the * * * premises, and the rents, issues and profits thereof to take, have, and apply to and for their sole use and benefit *until default be made* in the payment of said notes, or any of them, or any instalment of interest due thereon."

It is further provided that upon default being made in such payment, the trustees might sell the property at public auction, and upon payment of the purchase money, convey the property to the purchaser in fee-simple.

This impliedly carries with it the income of the estate after a default, and is equivalent to a conveyance of rents and profits.

2. The restraining order of March 18, 1878, (10) as well as the order of May 10, 1879, (16) appointing a receiver and restraining the parties from collecting the rents, effectually sequestered the rents *in arrears and uncollected* as well as those to become due.

These orders were both by consent of Shepherd, and he is therefore estopped to deny it. But if he is not so estopped the result is the same. Courts of equity in foreclosure suits, when the security is insufficient, will seize the rents *due and uncollected* as well as those to become due. This rule seems to be well settled.

Lofsky vs. *Marijer*, 3 Sandf. Ch., 78;
Howell vs. *Ripley*, 10 Paige, 47;
Argall vs. *Pitts*, 78 N. Y., 242;
Wycoff vs. *Scofield*, 98 N. Y., 475.

Jones in his recent work on Mortgages states the rule in this language, to wit:

"By the appointment of a receiver the mortgagee obtains an equitable claim not only upon the rents and profits *actually due at the time*, but also upon the rents to accrue; and his right to them is superior to that of the mortgagor's assignee in bankruptcy, or to that of any one else claiming under the mortgagor, as, for instance, his grantee who has bought subject to the mortgage, even when he has taken a note with personal security for the rent. But the receiver cannot call upon the mortgagor, or a junior mortgagee, to refund rents collected before the appointment of the receiver; nor is the receiver entitled to receive such rents.

2 Jones on Mort., § 1,536;
See for same doctrine, High on Receivers, §§ 643, 644.

This is an equitable and a just doctrine, and seems to be established by the weight of authority. There are no decided cases of this court to the contrary, although the language used in argument in some of the opinions, seem to indicate a more strict limitation. But an examination of the cases will disclose nothing to the contrary.

In the case of *Hughes* vs. *Edwards*, (9 Wheaton, 500), the court in its argument declares that the mortgagor is not responsible to the mortgagee "for the rents and profits *received by him* during the continuance of his possession," thus sanctioning the doctrine contended for here.

In *Gilman* vs. *I. & M. Tel. Co.*, (91 U. S., 603), the dispute was between the mortgagees and a judgment creditor, who had levied an execution or its

equivalent on the income of the railroad which had been *actually collected was in the hands of the officers of the railroad company*, and it was held that the execution creditor was entitled to the fund. If there were a judgment creditor here, who had levied or attempted to levy on the rents, either collected or uncollected, there would be much authority in his favor.

In the case of *Am. Bridge Co.* vs. *Heidelbach* (94 U. S., 198), the controversy was between the mortgagee, who did not take possession, and did not take any other effectual steps to secure the rents on default, and an execution creditor who had issued a *fieri facias*, which had been returned *nulla bona*, and had filed a bill to reach the earnings of the Bridge Co.; these earnings had been *actually collected and received*, and were on hand in the treasury of the defaulting company. The execution creditor, of course, was awarded priority, and took the fund.

In *Teal* vs. *Walker* (111 U. S., 242) the deed of defeasance stipulated that possession should be delivered to the mortgagee on default. Teal, one of the mortgagors, *who was in nowise responsible for the payment of the notes secured by the mortgages*, being in possession when default was made and demand of possession having been made upon him, refused to deliver possession. The property proved insufficient to pay the debt, and an action at law *for damages* alleged to have been sustained by the unlawful detention of the property by Teal, was instituted against him by the holder of the notes; *held* that a recovery could not be had. This case decided, if it decided anything bearing on the present cause,

that a mortgagor not liable for the payment of the debt secured, holding possession after default and demand, could not be held liable in an action for *damages* for rents which were not on hand, and had never been collected by anybody (67).

In *Galveston R. R. Co.* vs. *Cowdry* (11 Wall., 459) this court intimates that *if a demand for possession* had been made by the holders of the bonds secured by the trust deed or mortgage under discussion in that case, that the mortgagor would have been accountable for the earnings or income of the mortgaged property (483). There the mortgage conveyed and bound the tolls and income of the railroad, and gave possession after default.

In the recent case of *Dow* vs. *R. R. Co.* (124 U. S., 653) this court held that where the tolls and income of the railroad were conveyed by the mortgage and carried possession on default being made, that the commencement of a suit for possession was equivalent to a demand for possession, and that it held, for the benefit of the mortgagee, the funds *collected and received by the company* after the beginning of such suit.

The restraining order of March 18, 1878, included in terms the complainants and their respective "agents, attorneys and representatives," and was duly served on Wilson, and therefore bound all the rents subsequently collected by him. He was as much bound, being the attorney for Shepherd, and having knowledge, as if he had been a formal party, although he was not made a formal party until after he collected the $1,800.

Willesly vs. *Mornington*, 11 Beav., 181;
High on Injunction, § 1435.

IV.

Several extremely technical arguments have been advanced and relied on by the parties adverse to the Trust Company. One of them is that new parties can not be brought in by a cross-bill. One of the grounds of demurrer assigned against the cross-bill, (102) was that Bradley had not been made a party thereto; this demurrer was signed by Bradley himself as counsel for Shepherd. By leave of court he was then made a party. He and Shepherd object to it now!

A new party may be brought in by a cross-bill, and there is really nothing in the case of *Shields* vs. *Barrow*, (17 How., 130), when carefully examined, to support the contrary doctrine.

The Brandon Mfg. Co. vs. *Prime*, 14 Blatchf., 371.

It seems immaterial how imperfect the cross-bill may have been; it must be regarded as sufficient to apprise the court of the insufficiency of the property to pay the taxes and the debt; it might as well have been an affidavit. It was sworn to, and more than that, it was not answered.

The injunction of March 18, 1878, was based upon the bill, answer and the cross-bill. The order appointing the receiver and the accompanying injunction was based on the pleadings, and on a separate petition. (14.) They were "effectual" to hold the money and to eventually bring it into court, and it is now actually in court to be disposed of according to the principles of equity.

The Thompson suit was consolidated with the first

case, and the Trust Company stands there, with all its right to the fund carefully preserved. The order declares that the consolidation shall be "without prejudice in anything to the rights and interests of either or any of the parties in either of said causes."

Should the Court be of the opinion that the trust company was not entitled to the uncollected rents which had accrued prior to the filing of the bill or prior to the issuing of the restraining order of March 18, 1878, then in that event Shepherd should be compelled to account for the money he collected in violation of the order of March 18, 1878. Shepherd was clearly in contempt in collecting the rents in violation of the order of March 18, 1878. Wilson was too.

Hull vs. *Thomas*, 3 Edw. Ch., 238;
Skip vs. *Harwood*, 3 Atkins, 564;
Wellsly vs. *Mornington*, 11 Beav., 181;
High on Injunctions, § 1435.

If Shepherd occupies the place of Bradley (Thompson's claims being held invalid, and there being no other creditors) the equity of the case seems to be plain. Shepherd's debt (the Bradley notes) is still unpaid; the debt is a part of the purchase money. The fund is in the hands of the court. Shepherd first called upon the court demanding equity; he should be made to do equity. He consented to the two orders restraining him and his agents from collecting rents now in the fund, and they were passed because of the insufficiency of the security and to meet the dangers to the security by delay likely to ensue by reason of the McGann litigation. The money should be paid to the Trust Company and credited on the Bradley notes.

It appears to me too plain for argument, that the small sum collected by Bradley, as receiver, should be held to belong to the Trust Company, and that Shepherd in no event can be entitled to it.

It is submitted that the decree of the Supreme Court of the District of Columbia should be reversed and the whole of the fund in court should be awarded to the Commissioners of the Freedman's Saving and Trust Company.

ENOCH TOTTEN,

For F. S. & Trust Co., and its Commissioner.

127-494

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887.

THE FREEDMEN'S SAVINGS AND TRUST COMPANY, HENRY W. CANNON, *Commissioner, &c.*, *Appellants*, *vs.* ALEXANDER R. SHEPHERD AND JOHN W. THOMPSON *et al.*, *Appellees.* } No. 230.

ALEXANDER R. SHEPHERD *et al.*, *Appellants*, *vs.* JOHN W. THOMPSON, *Appellee.* } No. 256.

BRIEF.

H. H. WELLS,
M. F. MORRIS,
Solicitors for Thompson.

Beresford, Printer,
Washington, D. C.

IN THE

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vs.
ALEXANDER R. SHEPHERD AND JOHN W. THOMPSON *et al.*, *Appellees.*
No. 230.

ALEXANDER R. SHEPHERD *et al.*, *Appellants*,
vs.
JOHN W. THOMPSON, *Appellee.*
No. 256.

BRIEF FOR THE APPELLEE, JOHN W. THOMPSON.

STATEMENT OF THE CASE.

Andrew C. Bradley, being the owner of lot 4, square 377, Washington, D. C., gave a deed of trust thereon, on the 9th of June, 1873, to the Freedmen's Savings and Trust Company to secure $17,000 purchase money, payable in 1, 2, 3, 4 and 5 years, and leased the same premises to the Postmaster General for three years, from June 6, 1873, at an annual rent of $4,200, renewable for two years thereafter, subject to an appropriation by Congress to pay the rent.

Bradley, who originally bought the property for Shep-

herd from the Freedmen's Savings and Trust Company, conveyed the premises to Shepherd on August 27th, 1874, subject to the deed of trust and lease. Shepherd, having paid the first installment under the deed of trust, declined to make further payments because of the pendency of a suit of one McGhan against the Freedmen's Savings and Trust Company assailing the validity of the title of that corporation to the property in question.

The Trust Company thereupon advertised the property for sale under Bradley's deed of trust, and thereafter, and on the 2d of August, 1877, Shepherd and his trustees, to prevent the sale, filed the bill in cause No. 5,723, praying that the sale might be restrained, and a temporary restraining order was issued on that day.

On the 17th of January, 1880, that restraining order was dissolved, and the property was sold on the 16th day of February, 1880, for $8,500, leaving $11,466.12 of the purchase money unpaid.

On the 27th of October, 1877, the F. S. & T. Co. filed their cross-bill, alleging the lease of the property for $4,200 a year to the Post Office Department, and that three years' rent was then due.

That Shepherd was insolvent, and had made an assignment to his trustees, the co-complainants, Taylor, Cross and Bacon, so that if the rent was collected by him or his trustees the amount would go to pay his general creditors, while it ought to be applied to the purchase money then due and unpaid to the F. S. & T. Co.

The cross-bill prayed that the complainants, Shepherd and others, should be restrained from receiving the rent, and that a receiver be appointed to prosecute the pending suit for rent in the Court of Claims.

The cross-bill assumed that the claims for the unpaid rents were still held by Shepherd and his trustees, while, in fact, Shepherd had assigned these rents on the 21st of June, 1877, and Nathaniel Wilson, the attorney of record in the suit pending for the collection thereof, was directed to pay the money

received therefor to William Thompson, trustee for John W. Thompson; but neither Wilson nor the Thompsons were made parties to the suit, nor were they named in the restraining order issued on the 8th of March, 1878, restraining Shepherd and his trustees and their agents from collecting the rents; but on the 20th of April, 1878, a copy of the injunction was served on Wilson, and on March 12, 1879, the F. S. & T. Co. applied for a receiver and an injunction, and on May 10, 1879, an injunction was granted, and A. C. Bradley was, by consent of Shepherd, appointed a receiver.

On the 24th of May, 1879, Wilson was, on the motion of A. C. Bradley, ordered to be made a party defendant, and on June 25, 1879, he answered, refusing to pay over the money in his hands, and denying the right of Bradley to receive or have the same, and alleging that he had prosecuted the claim in the Court of Claims, that Shepherd was insolvent and had assigned the rents for the benefit of his creditors; and subsequently Shepherd and his assignees and Bradley had assigned the rent and endorsed one of the drafts to Thompson, but he, Wilson, was prevented from paying the proceeds thereof to Thompson by the restraining order referred to.

On June 25th, 1879, the complainant Thompson filed a petition asking for leave to appear in the cause, alleging that Wilson was improperly made a party; that by making him a party Thompson's interests were unduly jeopardized; that Bradley, receiver, had no right to have the rents paid to him which had been assigned to him (Thompson) on the 21st of June, 1877; he also prayed that Bradley's petition be dismissed and the order set aside making Wilson a party, adopting Wilson's answer as his own.

On October 30, 1880, Thompson filed his supplemental or amended petition, alleging that after the date of his original petition he had recovered a judgment against Shepherd for $4,000; that he had also laid an attachment for the rents in Wilson's hands, and had commenced his suit at law to recover a further sum of $15,000 due from Shepherd to him.

He further alleged that Shepherd was insolvent, and had removed from the District of Columbia.

Before filing this amended petition, to wit: on the 31st of October, 1879, a special auditor was appointed, and the McGhan suit having been decided, the injunction restraining the sale was dissolved, and the Trust Company proceeded to sell the property. The special auditor made his report giving the fund to the F. S. & T. Co., to which Thompson and Shepherd and his assignees excepted.

When the exceptions were filed, the complainants in the original suit filed a motion to vacate the order of reference and the report made thereunder, because no subpœna had been issued upon the cross-bill, and there had been no appearance or answer filed, and because the order was made without notice; and that prior thereto (May 27, 1881), the complainants in the original suit (5,723), Shepherd and his trustees, demurred to the cross-bill of the defendants, assigning for cause that the cross-bill was for a different purpose than the original bill; that its subject-matter was not germane to it, but was new matter; that the cross-bill showed that Bradley was interested in the subject-matter and relief sought, and was therefore a necessary party to the original bill, but he was not made a party to the cross-bill, and that the cross-bill did not contain any matter for equitable relief.

It does not appear by the record that anything has ever been done with the exceptions, though they were, as a matter of fact, considered and sustained at the same time when the demurrer was sustained; the entry as to the demurrer being sustained, recites that it was done on the 2d of November, 1881.

On November 11, 1881, the F. S. & T. Co. applied for a rehearing of the demurrer, which was refused, and on November 22d, 1881, an amendment and supplement to the cross-bill was filed by that company, process prayed, and subpœna issued and served. Shepherd, Bradley, Cross and Bacon filed their answers thereto March 15, 1883, and al-

leged that the sale of the property operated to discharge the debt; that the sole purpose of the original bill was to prevent the sale and to obtain an injunction until the decision of the McGhan case in the Supreme Court; that Shepherd was entitled to the rents accruing prior to the sale; that the temporary injunction was dissolved, and the entire office of the original bill was fulfilled, and it was not until thereafter that process of subpœna was issued, and that there was then no cause pending, and they pray that they may have the same benefit of these proceedings as if they had been pleaded in bar.

This answer renews and presents again the same matters that were presented in the demurrer to the cross-bill, and claims that the amended cross-bill should be dismissed.

In this state of the record John W. Thompson filed his petition on the 13th of April, 1881, which alleged that he could not have adequate relief in cause 5,723, and prayed leave to file his original bill, which being granted, he filed the bill in equity cause 7,675, making Bradley, Shepherd, Taylor, Cross, Bacon, Wilson and Wm. Thompson parties. That bill alleged the indebtedness of Shepherd to Thompson in the sum of about $20,000, now embraced in two judgments at law, Nos. 20,835 and 20,907; that Thompson from time to time released, at Shepherd's request, portions of the property included in the trust deed, until the security was practically destroyed, upon promises that Shepherd would give further security.

That Shepherd being insolvent made a general assignment of all his effects for the payment of all his debts on September 5, 1876, to Bacon, Taylor and Cross, trustees, and among the property conveyed was lot 4 hereinbefore described, and the claims for the rent thereof against the United States, and for the purpose and trust, among others, that they should make such conveyances of the property thereafter, in payment of Shepherd's debts, as he might direct.

That in pursuance of that authority, and to give additional

security to the complainant, Shepherd, on June 21st, 1877, made an assignment, in which Bradley united, and Shepherd's trustees, Cross, Taylor and Bacon, concurred, of the claim for the rent of the premises in question, being the same claim represented by the money and draft in the hands of the defendant Wilson, agreeing that any draft issued therefor should, when received, be indorsed and delivered to William Thompson, trustee, and the proceeds be applied to the payment of the trust debt due to John W. Thompson.

That on May 3d, 1879, Wilson, Shepherd's attorney, received a draft for $1,800 for the rent for the year ending June 30, 1876, drawn in favor of Bradley for the use of Shepherd, to the use of Taylor, Cross and Bacon, trustees, all of whom endorsed it, and Wilson collected the same.

That at the time of the decision of the case in the Court of Claims, out of which this draft for $1,800 arose, the claim was pending for the rent for the years ending June 30, 1877, and June 30, 1878, and for which Wilson received a draft on the 16th of May, 1879, for $3,475, which has not, however, been endorsed to him, but endorsement was refused on the ground of the pendency of the restraining order in equity cause No. 5,723, and the appointment of Bradley receiver; but as neither of these proceedings settled any right to the draft, the claim made by the several parties to the proceeds of those drafts was not affected thereby.

The bill further alleges that the proceedings in cause No. 5,723 were no justification for the refusal to endorse the draft or to pay the proceeds over to the complainant; that the F. S. & T. Co. had no lien or right in the rents; that their right was to *enter into possession and sell*, and not to have rents and profits while in Shepherd's possession; that at the time of the assignment of these rents to Thompson, Shepherd had a clear right to transfer; that the transfer was in fact made to his trustees by him as an insolvent, and the same was not obnoxious to the provisions of the act of Congress of February 26, 1853.

That neither Bradley or Wilson were, or could be, law-

fully made parties to the suit between Shepherd and his trustees, and the F. S. & T. Co. or the cross-bill filed by the latter therein, because in fact no change of parties could be made by a cross-bill.

All the defendants appeared and answered the complainant's bill.

The defendant, Wm. Thompson, trustee, says he has no interest in the premises except as trustee, and admits the bill to be true.

To the same effect substantially is the answer of Wilson and Taylor.

The F. S. & T. Co. assert that the assignment to Thompson of the rents and profits was void under the act of Congress of February 26, 1853.

That if Thompson had released any portion of the property under the deed of trust, they are entitled to have the value of such released property as a security deducted from his claim against Shepherd before he can resort to the claim for rents, on which they assert a lien.

That the endorsement by Bradley, Shepherd, Cross, Taylor and Bacon of the draft, was also in violation of the injunction issued in cause 5,723, because Wilson and Bradley had actual notice thereof.

That the attachment of April 18th, 1878, did not create a lien.

That the F. S. & T. Co. had not been paid in full; that the property was not sufficient to discharge their debt, and they have a right to have the drafts and the proceeds thereof paid to them.

That the matters embraced in this suit were all included in the cause No. 5,723, to which Thompson and Thompson were regularly made parties, and the former has no right to institute or maintain this suit during the pendency of that action.

Bradley's answer admits that he united in the assignment of June 21, 1877, because the suit was pending in the Court of Claims in his name for Shepherd's use.

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That at the time of the decision of the case in the Court of Claims, out of which this draft for $1,800 arose, the claim was pending for the rent for the years ending June 30, 1877, and June 30, 1878, and for which Wilson received a draft on the 16th of May, 1879, for $3,475, which has not, however, been endorsed to him, but endorsement was refused on the ground of the pendency of the restraining order in equity cause No. 5,723, and the appointment of Bradley receiver; but as neither of these proceedings settled any right to the draft, the claim made by the several parties to the proceeds of those drafts was not affected thereby.

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That neither Bradley or Wilson were, or could be, law-

fully made parties to the suit between Shepherd and his trustees, and the F. S. & T. Co. or the cross-bill filed by the latter therein, because in fact no change of parties could be made by a cross-bill.

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That if Thompson had released any portion of the property under the deed of trust, they are entitled to have the value of such released property as a security deducted from his claim against Shepherd before he can resort to the claim for rents, on which they assert a lien.

That the endorsement by Bradley, Shepherd, Cross, Taylor and Bacon of the draft, was also in violation of the injunction issued in cause 5,723, because Wilson and Bradley had actual notice thereof.

That the attachment of April 18th, 1878, did not create a lien.

That the F. S. & T. Co. had not been paid in full; that the property was not sufficient to discharge their debt, and they have a right to have the drafts and the proceeds thereof paid to them.

That the matters embraced in this suit were all included in the cause No. 5,723, to which Thompson and Thompson were regularly made parties, and the former has no right to institute or maintain this suit during the pendency of that action.

Bradley's answer admits that he united in the assignment of June 21, 1877, because the suit was pending in the Court of Claims in his name for Shepherd's use.

He alleges that he executed the assignment only as an assignment of the first year's rent, and not of the two following years; that when Shepherd endorsed the draft he made a condition that Thompson should release the Gideon and Morsell lots.

He says that himself and Mattingly are Shepherd's agents and attorneys in fact.

Shepherd's answer sets up substantially the same matters as Bradley's.

He admits that he made the notes, but denies that the amount due is correctly stated, but that he is entitled to a further credit of $1,700. He admits that the plaintiff released the lots referred to, but denies that it was on condition that he should give further security. He admits the execution of the deed of trust, and also the assignment of June 21, 1877.

He says that the second suit for rents in the Court of Claims was commenced only a short time before the decision of the first suit. He says that on June 21, 1877, the date of the assignment, the rent for the fiscal year ending June 30, 1878, had not accrued.

He alleges that Wilson was acting as the attorney of Thompson and not for himself, and that the assignment of the draft was conditioned upon the release of the Gideon and Morsell lots.

That the assignment was void because in violation of section 3477, Revised Statutes.

He admits that he was a witness in the Fugit suit, but he denies that his testimony was competent evidence in this case.

On May 19, 1883, defendants Cross and Bacon filed their answer; they, however, present no new matter, but adopt with some modifications and additions what is said by Shepherd and Bradley in their answer.

It was agreed that the testimony theretofore taken might be used in these cases.

Replications were duly filed to all these answers.

A decree was entered as follows:

In No. 7675 the Court was of opinion that John W. Thompson was entitled to the proceeds of the two drafts, one for $1,800 and the other for $3,475, received by the defendant, Nathaniel Wilson, from the Treasury of the United States, and decreed that the defendants Bradley, Shepherd, Taylor, Cross and Bacon do endorse or cause to be endorsed the draft for $3,475, before mentioned, in the hands of the defendant Wilson, and that thereupon the said defendant Wilson do forthwith proceed to collect the said draft from the United States and pay over to the complainant, John W. Thompson, or to his solicitors of record, the proceeds thereof, and that said defendant Wilson do also forthwith pay over to said Thompson, or his solicitors of record, the sum of $1,200, the residue yet remaining in his hands of the aforesaid draft for $1,800, heretofore received and collected by him.

In cause 5723, the Court decreed that the amended and supplemental cross-bill be dismissed, and that Andrew C. Bradley, Receiver, pay over to the trustees of Alexander R. Shepherd the sum of $787.50, being the amount of rents collected by him, less his commission, and that he be thereupon discharged from the Receivership.

In cause 5723 each party was to pay his own costs, and in cause 7675, the defendants Shepherd and his trustees and the Commissioner of the Trust Company, were to pay the costs of the suit. From this decree the F. S. & T. Company prayed an appeal, which was allowed, No. 230, and from so much of the decree as refers to cause 7675, Shepherd and his trustees pray an appeal, which was allowed, No. 256.

Brief of Argument.

I.

The complainant, Thompson, and all of the defendants, excepting the Freedmen's Savings and Trust Company, are agreed on the first point, to wit: That Shepherd's original

bill, which sought to restrain the sale, was *functus* when the injunction was dissolved and the sale was made, and that the cross-bill filed thereafter fell with it.

An inspection of the Shepherd bill (page 2 to 5, Record,) shows that the only prayers therein were prayers for injunction, general relief and process; and that the only case charged in the bill was that a sale under the deed of trust would be inequitable until the final decision in this Court of the McGhan suit, which suit was decided at the October term, 1879, and the title to the property sustained.

The injunction was dissolved on the 17th day of January following, and the property was sold on the 16th day of February, 1880, so that thereafter there was no bill pending nor any cause of complaint existing.

The cross-bill not only fell with the original bill, but was properly dismissed on the further grounds that there was no process issued, no appearance of defendants; that a demurrer to the cross-bill had been sustained and that there was then no pending cause.

"A cross-bill *ex vi terminorum*, implies a bill brought by a defendant in a suit against the plaintiff in the same suit, or against other defendants in the same suit or against both, touching the matter in question in the original bill."

Story's Eq. Pleadings, Sec. 389.

A cross-bill is "treated as a mere auxiliary suit, or as a dependency upon the original suit, and can be sustained only on matter growing out of the original bill. New parties cannot be introduced into a cause by a cross-bill."

2d Daniels Ch. Practice, 1,646.

In Cross *vs.* DeValle, 1st Wall, 1, the Court say at page 14: "The decree of the court was final and complete as to the case made by the complainant's bill * * * a cross-bill is a mere auxiliary suit and a dependency of the original. * * * The bill filed by the heirs is for an entirely different purpose from that filed by Cross. * * * This

would be introducing an entirely new controversy not at all necessary to be decided in order to have a final decree in the case presented by the original bill."

The same question was discussed and the same doctrine again announced in Ayer *et al. vs.* Carver *et al.*, 17 H., 591, at page 595, where it is said: "It (the cross-bill) should not introduce new and distinct matters not embraced in the original bill, as they cannot properly be examined in that suit, but constitute the subject-matter of an original independent suit. The cross-bill is an auxiliary to the proceeding in the original suit, and a dependency upon it."

In Shields *vs.* Barrow, 17 H., 130, the Court say, page 146: New parties cannot be introduced into a suit by a cross-bill. If the plaintiff desires to make new parties, he amends his bill and makes them. If the interest of the defendant requires their presence, he takes the objection of non-joinder and the plaintiff is forced to amend or his bill is dismissed. If, at the hearing the court finds that an indispensible party is not on the record, it refuses to proceed. These remedies cover the whole subject, and a new cross-bill to make new parties is not only improper and irregular, but entirely unnecessary.

All before said in respect to the first cross-bill applies as well to the second. The last cross-bill was filed in the same suit, Shepherd and his trustees against the F. S. & T. Company, as the first, and was entitled "Amendments and supplement to the cross-bill of the Commissioners of the Freedmen's Savings and Trust Company." (See page 104, Record.) Upon it process was issued and served, but the cause to which it was ancillary was dismissed and the injunction dissolved on January 17, 1880, nearly two years before, as we have before said. (Record, page 31.)

It was also subject to the objection that it added new parties and presented an entirely new issue. It made Thompson and Thompson, Wilson and Bradley parties, none of whom were parties to the original bill or first cross-bill, while the relief prayed was that the rents derived from the

property prior to the sale, "might be applied to the payment of the deficiency arising on the sale of the property under the deed of trust; that the said funds in the hands of the said Andrew C. Bradley and Nathaniel Wilson may be paid over to him." (John J. Knox, Commissioner F. S. & T. Company. Record, page 106.)

This amended or supplemental cross-bill falls within the very principle and language of the cases cited above, especially Shields *vs.* Barrow, and presents a new original claim. (See also Smith *vs.* Woolfolck, 115 U. S., 143.)

II.

The F. S. & T. Company had no interest, under the existing contract between that corporation and Shepherd, in the fund in Wilson's hands. In this proposition Thompson, Shepherd, Bradley and Shepherd's trustees, all concur.

The deed of trust given by Bradley to the F. S. & T. Company, is the measure of the rights of the parties thereunder. A copy of that instrument, being Exhibit No. 11, is found on page 56, record. It conveys the property to the trustees upon the trust to permit Bradley, his heirs and assigns, to hold, use, and occupy the premises, and to have, take, and apply to their sole use and benefit "the rents, issues and profits thereof" until default in payment, and in case of default to sell the property, and out of the proceeds to pay the amount due on the notes, principal, interest, costs and expenses.

The right of the F. S. & T. Co. thereunder was to have its debt, principal and interest, satisfied out of the proceeds of the sale of the property. It had no interest in the rents or profits.

It was not only agreed that Bradley and his grantee, Shepherd, should have possession until the sale, but such was their right at law.

In Gilman *vs.* Ill. and Miss. Tel. Co., 91 U. S., 603, that precise question was determined. The Court say therein, at page 614:

"A mortgagor's real estate is not liable for rent while in his possession. He contracts to pay interest and not rent * * * until the mortgagee takes possession the mortgagor is owner to all the world, and entitled to all the profits made."

In Gilman's case there were two mortgages and decrees of foreclosure, and under the mortgages it was competent for the mortgagees to take possession and thereafter hold the rents. They did not, however, do that, and the Court says further: "There was a simple decree of sale; the decree was wholly silent as to the possession and the earnings in the meantime." It follows that neither, during that period, was in any way affected by the action of the Court.

The same question was before this Court in American Bridge Co. *vs.* Heidelbach, 94 U. S., 798. In that case the mortgage covered not only the property, but the rents, issues and profits arising therefrom, and authorized the mortgagees to take possession. An execution creditor sought to reach rents and profits in the hands of the company after default in the payment of the mortgage.

At page 800, the Court say: "It cannot be denied that the return of the execution, the filing of the bill, and the service of process, gave the judgment creditor a lien upon the fund in question which must prevail, unless the mortgagees have shown a paramount right to it. * * * The question as to the right claimed by the trustees is conclusively settled against them by Galveston R. R. *vs.* Coudry, 11 Wall, 459; Gilman *vs.* Ill. & Miss. Tel. Co., 91 U. S., 603."

"Upon the default which occurred, the mortgagees had the option to take personal possession of the mortgaged premises or to file a bill, have a receiver appointed and take possession. In either case the income thereafter would have been theirs. Until one or the other was done the mortgagor, as Lord Mansfield said in Chinney *vs.* Black, 3d Douglass, 361: 'was owner to all the world and entitled to all the profits made.'"

In Kountze *vs.* Omaha Hotel Co., 107 U. S., 378, the Court say: "In the case of a mortgage * * * the rents and profits are not pledged, they belong to the tenant in possession, whether the mortgagor or a third person claiming under him."

In Teal *vs.* Walker, 111 U. S., 242, decided April, 1884, the whole subject seems to be finally disposed of, affirming what has before been said in the two cases last cited.

At page 248, the Court say: "We believe that the rule is, without exception, that the mortgagee is not entited to demand of the owners of the equity of redemption the rents and profits of the mortgaged premises until he takes actual possession."

After citing a long list of English cases, the opinion continues: "The American cases sustain the rule, that so long as the mortgagor is allowed to remain in possession, he is entitled to receive and apply to his own use the income and profits of the mortgaged estate; and although the mortgagee may have the right to take possession on condition broken, if he does not exercise the right, he cannot claim the rents. If he wishes to secure the rents, he must take means to obtain the possession."

In this case the F. S. & T. Co. neither took possession, filed a bill, or had a receiver appointed and possession delivered to him, for at the time when the petition for the appointment of a receiver was filed, March 12, 1879, (Record, page 14,) the whole period during which these rents were earned had elapsed. It was a petition for a receiver of rents earned exclusively before that time, and was an attempt to compel Shepherd to account for rents already received; but on the 21st of February, 1879, a motion to compel him to pay such rents into court was denied. (Record, page 13.)

It is apparent that the defendant, the F. S. & T. Co., have no interest in this fund derived from rents, whether it claims the same under the cross-bill or as a defendant in the suit of Thompson *vs.* Shepherd *et al.*, No. 256.

III.

The defendants, the Trust Company, Bradley and Shepherd and his trustees, unite at this point in denying Thompson's title to the proceeds of the rents in Wilson's hands earned after June 30, 1875.

Shepherd being indebted to Thompson, the following instrument (found in the Record, page 20), dated June 21, 1877, was executed by the parties:

"In consideration of the indebtedness described in the deed of trust to William Thompson, trustee, executed March 10, 1873, and recorded in Liber No. 712, folio 128, of the Land Records of the District of Columbia, the demand and claim of A. C. Bradley to the use of A. R. Shepherd and others against the United States for the use and occupation of the premises No. 915 E street northwest and all the proceeds thereof, and the moneys derived therefrom are hereby pledged and made applicable to the payment of said indebtedness with interest thereon at the rate of 8 per cent. per annum until paid, and it is hereby covenanted and agreed that any draft or check issued in payment or part payment of said claim shall be indorsed and delivered to the trustee named in said trust and the proceeds thereof, less all proper costs and charges, be applied to the payment of said indebtedness, with interest as aforesaid, or to so much thereof as the sum or sums of money so received is or are sufficient to pay.

"Witness our hands this 21st day of June, 1877.

"A. C. BRADLEY,
"ALEX. R. SHEPHERD.

"The undersigned trustees hereby consent and concur in the above assignment.

"GEO. TAYLOR, *Trustee*,
"SAM. CROSS, *Trustee*,
"PETER F. BACON, *Trustee*."

It is insisted on behalf of Shepherd that the assignment to Thompson of the claim against the United States was void because in violation of section 3477, Revised Statutes U. S.

Almost every question that can arise under this section has already been considered and decided by this Court.

See United States *vs.* Gillis, 95 U. S., 407.
Erwin *vs.* United States, 97 U. S., 392.
Spofford *vs.* Kirk, 97 U. S., 484.
Goodman *vs.* Niblack, 102 U. S., 556.

The first case decided substantially that "claims against the United States cannot be assigned so as to enable the assignee to bring a suit in his own name."

Spofford *vs.* Kirk went further, and held that the statute embraced every claim against the United States however arising, of whatever nature, adopting U. S. *vs.* Gillis, and that the two principal evils sought to be remedied by the statute were "the possible presentation of a single claim by more than a single claimant, the original and his assignee, thus raising the danger of paying the claim twice."

"Another and the greater danger was the possible combination of interests and influences in the prosecution of claims," and the opinion conclues that the language of the act is too sweeping and positive to justify a limited construction; that as the statute declared all transfers of the whole or any part to be absolutely null and void, the court could not decide that such transfers are only partially null and void, and that they are valid as between the parties thereto. (See page 490.)

But Erwin's case decided that "the claim of a bankrupt against the United States passed by the assignment in bankruptcy proceedings to his assignee, and that the latter and not the original claimant was the proper person to sue in the Court of Claims. The passing of claims to heirs, devisors or assignees in bankruptcy is not within the evils at which the statute aims."

This limitation upon the very broad language of Spofford *vs.* Kirk was considered again by this Court in Goodman *vs.* Niblack in 1880, and Mr. Justice Miller, in delivering the opinion of the Court, says at page 560: "The language of the statute, all transfers and assignments of any claim upon the United States or of any part thereof or interest therein is broad enough (if such were the purpose of Congress) to include transfers by operation of law or by will. Yet we held that it did not include a transfer by operation of law or in bankruptcy, and we said that it did not include one by will. The obvious reason of this is, that there can be no purpose in such cases to harrass the Government by increasing the number of persons with whom it has to deal, nor any danger of enlisting any improper influences in advocacy of the claim," and adds:

"In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor of all his effects, which must, if he be honest, include a claim against the Government, differ from the assignment which is made in bankruptcy?"

Thompson founds his claim on that clear and manifest distinction. Shepherd, being insolvent, made a general assignment to Taylor, Cross and Bacon, dated November 15, 1876, of all his effects to pay all his creditors, in which was included this claim for rent, and among the creditors named was John W. Thompson.

Six months after the execution by the insolvent of the general assignment, the written transfer quoted above, dated June 21, 1877, signed by Bradley, Shepherd, and the latter's trustees under the general assignment, was executed.

This case thus far, as we submit, differs in no material particular from Goodman *vs.* Niblack, where it was held that the assignment in that case for the benefit of creditors, although it covered what might be due to him under his contract with the Government, was not within the prohibition of the act of 1853, nor in violation of public policy.

At page 561, the court say: "The claim was obviously

included in the assignment for the just and proper purpose of appropriating the whole of his effects to the payment of all his debts. We cannot believe that such a meritorious act as this comes within the evils which Congress sought to suppress by the act of 1853."

And it is said further, that the general assignment of Sloo gave Cheever and Wiles, his assignees, "no right to assert a claim against the Government. They could only deal with the trustees under the first assignment, and on them they had only a claim for the net profits which came into their hands. Cheever and Wiles and the present complainants were neither of them capable of suing the United States in the Court of Claims, or of presenting the matter before the accounting officers of the Government. * * * We do not think that the transfer to Cheever and Wiles, as trustees for Sloo's creditors, is forbidden by the act of 1853, or by any other principle of law, or of public policy."

The doctrine of the case of Goodman *vs.* Niblack was restated and affirmed in this court in the case of Hobbs *vs.* McLean, 117 U. S., 567, where it is said:

The proceedings in this case are in entire harmony with that view. The claim for rents under the lease was brought in the Court of Claims by Wilson, attorney for Shepherd, in the name of Bradley for the use of Shepherd, for the use of Shepherd's trustees, and the judgment and warrant subsequently issued therefor were in the same form; and when the draft for $1,800 was received, it was endorsed by Bradley, Shepherd, Taylor, Cross and Bacon, trustees, and the money paid to Wilson. As to that draft, it was an executed, completed transaction.

At the time of the decision of this Court upon the claim for rent, just referred to, a suit for the rent which fell due after the period embraced in the first claim was pending in the Court of Claims; but Wilson, instead of prosecuting that suit further, presented to the proper officers of the Government an account for the rent due for the years 1877 and 1878, the same embraced in the second suit in the Court of

Claims, which was allowed and paid at the sum of $3,475 by a draft payable, like the first, to Andrew C. Bradley to the use of Alexander R. Shepherd to the use of George Taylor, Samuel Cross, and Peter F. Bacon, trustees. (Record, page 19.)

That draft was delivered by the United States to Wilson, attorney for Shepherd, and was held by him until January 28, 1885, when, by consent, it was endorsed and collected, and the proceeds of both drafts, $4,675.00, were invested to the benefit of the cause. (See Stipulation, page 152, Record.)

As to the first, then, of these drafts, the money for which is in Wilson's hands, no question can arise, because no part of the contract remains *in fieri*, but it was in all respects fully executed.

As to the second draft, the agreement may be said to have been also executed, for the draft was issued and delivered to Wilson, the Government thereby recognizing his authority to receive the same, and whatever right of objection existed prior thereto, none existed thereafter, and the Government, in issuing that draft, without objection, waived any right to object to the assignment under the provisions of the act of 1853.

In Bailey *vs.* U. S., 109 U. S., 432, it was declared that the purpose of the statute was to protect the Government, and not parties to the assignment. The court says: "That the statutes in question are not to be interpreted according to the literal acceptation of the words used. They show that there may be assignments or transfers of claims against the Government, such as, for instance, those passed upon in Erwin *vs.* U. S., and Goodman *vs.* Niblack, which is not forbidden by the statute." (See page 438–9.)

The object of the statute being to protect the Goverment and not the claimant, if the Government chooses to recognize the validity of the transfer, the claimant cannot be permitted to make his own disregard of the statute the basis for impeaching the settlement made with his agent; the Court says:

"The title of the act of 1853 suggests this purpose. It is to prevent frauds upon the Treasury. An effectual means to that end was to authorize the officers of the Government to disregard any assignment or transfer of the claim or any power of attorney to collect it, unless made or executed after the allowance of the claim, the ascertainment of the amount due thereon, and the issuing of the warrant for the payment thereof."

Now, as before said, the Government has not claimed or exercised any right to refuse to deliver the last warrant to Wilson on any ground, especially the alleged defect in the assignment, or that it was in violation of the act of 1853, and Shepherd cannot contest it on that ground.

The general assignment, Shepherd to Cross and others, has never been revoked, annulled or set aside, but Shepherd's trustees have gone on to execute the same fully. The appropriation of the claim by Bradley, Shepherd, and his assignees, of June 21, 1877, to the payment of the trust to William Thompson, is still in force. The Treasury draft for the same delivered to Wilson, has been, without prejudice, paid to the credit of the cause, and there is now no question open as to the validity of the draft, or the payment by the United States, but only the single question, whether the assignment or transfer of the claim under the paper of June 21, 1877, was invalid as between Shepherd and Thompson, all right and power of the United States to object having been waived, and the validity of the transfer recognized and acted on.

IV.

It is claimed by Bradley and Shepherd that if the assignment to Thompson was valid, and he is entitled to the proceeds of the first draft, the assignment only included that draft and not the second one.

But that that pretension is not well founded is shown by the words describing the claim, to wit:

"The demand and claim of A. C. Bradley for the use of A. R. Shepherd and others against the United States, for the use and occupation of the premises 915 E street, northwest, *and all the proceeds thereof and the moneys derived therefrom.*"

The description of the claim was the same in both suits under which both drafts were received. The names of the persons to whom the drafts were to be paid were the same, and must be the same, because the insolvent's assignment passed the whole claim under the lease, whether then due or subsequently accruing, the only difference was that the first suit was for the rent for the year ending June 30, 1876, the installment of rent then due, all that could then be sued for, while the second suit was for the rent which subsequently fell due.

What was the claim? It was a claim for rent under a lease from Bradley to Creswell, Postmaster General, and the contest in relation thereto was, whether the amount of the rent was to be $4,200 or $1,800 a year for the three years not then settled; and whether the amount was to be $4,200 or $1,800 depended upon the fact that while the rent named was $4,200, the amount appropriated by Congress for that purpose was only $1,800 a year, and the Court of Claims having decided that the latter was the rate, the drafts were issued on that basis.

The contention that only one year's rent, one installment, was intended to be assigned, finds no support or countenance in the paper itself. On the other hand, the language of the instrument, before quoted, is, "all the proceeds thereof and the moneys derived therefrom," are hereby pledged.

The defendants, however, undertake to limit the operation of the transfer to one year's rent. They divide a claim which the transfer treats as an entirety, when there is nothing to indicate that one part of the claim is conveyed more than another.

Another conclusive answer to this claim to thus limit Thompson's security to a part of the demand, is the language used by Shepherd in relation thereto. He said; "I assigned certain rents of house 915 E street * * * which will aggregate about $5,400," just three years' rent, which statement was made after the rate had been fixed by the decision of the Court of Claims; and Shepherd, in his answer, does not deny making this statement, but says that he does not remember whether he made it or not, but maintains that it is incompetent evidence.

H. H. WELLS,
M. F. MORRIS,
Solicitors for Complainants.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1887.

No. 230.

The Freedman's Savings and Trust Company, Henry W. Cannon, Commissioner, &c.,
Appellants,

vs.

Alexander R. Shepherd, John W. Thompson, et al.

No. 256.

Alexander R. Shepherd, Appellant,

vs.

John W. Thompson.

BRIEF FOR ALEXANDER R. SHEPHERD AND HIS TRUSTEES, Appellants.

A. C. BRADLEY,
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No. 256.

ALEXANDER R. SHEPHERD, Appellant,

vs.

JOHN W. THOMPSON.

Brief for Alexander R. Shepherd and His Trustees, Appellants.

Alexander R. Shepherd purchased from the Freedman's Savings and Trust Company part of lot 4, in square 367, in this city (No. 915 E street northwest), for the sum of $18,500, of which he paid $1,500 in cash. He had the Freedman's Savings and Trust Company convey the property to A. C. Bradley in fee. Bradley gave his notes for $17,000 for the deferred payments, secured by deed of trust upon the property. Shepherd had paid the first of these notes for $2,400 and eighteen months' interest on the debt, when one Louisa McGhan and Edward Clark, her trustee, filed a bill in equity against Shepherd and the Freedman's Savings and Trust Company, claiming, in substance, that the

Freedman's Savings and Trust Company had no title to the property and seeking to set aside the sale made by it to Shepherd, prior to this time Bradley having leased the property to the Postmaster-General and had conveyed the property to Shepherd and assigned the lease to him. In consequence of this suit by Mrs. McGhan, Shepherd discontinued payment of the notes and interest, and the Freedman's Savings and Trust Company, acquiescing in this for some time, finally caused the property to be advertised for sale at public auction by the trustees under the deed of trust. Thereupon the original bill, No. 5,723, Equity (No. 230 in this court), was filed in the court below, the sole object of which, as shown by the prayer of the bill (Rec. 5), was to enjoin the sale until the final determination of the McGhan suit, then pending in the Supreme Court of the United States.

Upon filing the bill, Aug. 2, 1877, the following order was passed: "That the application for injunction be heard on the 4th day of September next before the court in special term, or as soon thereafter as the same can be heard by the court, and in the mean time that the defendants be restrained as prayed."

No hearing was had upon the application, but the order was permitted to remain for what it might be worth until January 8, 1880.

An answer was filed October 25, 1877, admitting all of the material allegations of the bill, but averring that it was immaterial whether the pending suit was a cloud or not.

The same day a cross-bill was filed alleging that the premises were rented to the United States for $4,200 per annum, that a suit was pending in the Court of Claims to collect the rent, alleging Shepherd's (and Bradley, the maker of the notes) insolvency, and the fear that the premises would not sell for sufficient to pay the debt and taxes, that they *think* they are entitled to have the rents applied to the payment of the debt, and praying for injunction and receiver.

No persons are named as defendants to the cross-bill, and no process was ever issued upon it until *February* 26, 1881.

No steps were taken to bring the cause to hearing upon the original bill; no testimony was taken; but on January 8, 1880, the defendants moved for a dissolution of the restraining order upon the ground that the cause, the pendency of which had been made the sole foundation of the bill, had been determined by the Supreme Court of the United States, and upon January 17, 1880, they took an order dissolving the restraining order, which was in fact and practical effect the final determination of the cause on the bill.

The following are the several steps in the cause subsequent to answer and cross-bill:

March 18, 1878. Order for *injunction* on motion for injunction and receiver as prayed in cross-bill. R. 10.

March 12, 1879. Petition for receiver for the purpose of preserving rents and notice of motion for receiver as prayed in petition. R. 14.

May 2, 1879. Motion for injunction and receiver filed. R. 15.

May 10, 1879. Order appointing receiver, by consent, to collect rents, except certain reserved rents to be collected by Shepherd, and to collect certain claims for rent pending. R. 16.

Jan 8, 1880. Motion to dissolve restraining order. R. 30.

Jan. 17, 1880. Order dissolving restraining order. R. 31.

Feb. 28, 1880. Petition for possession, reciting sale under the trust and purchase, order directing receiver to surrender possession and referring cause to Carusi to state account of receiver. R. 31.

(*Note.*—The receiver found the possession in the United States and never had possession of the property.)

Feb. 26, 1881. Order for process on cross-bill. R. 96.

March 5, 1881. Petition for order on Shepherd to answer. R. 97.

March 11, 1881. Motion for order of publication. R. 99.

May 10, 1881. Order requiring Shepherd to answer plead, or demurr, in twenty days. R. 101.

May 20, 1881. Demurrer by Shepherd *et al.* on the ground that cross-bill not for same matter as original bill, but for new matter; that Bradley would be a necessary party to an original bill seeking the same relief, but he is not a party; and that the cross-bill contains no equity upon which any relief could be granted against the defendants. R. 101.

Nov. 2, 1881. Order sustaining demurrer and giving leave to amend by making Bradley a party, and in such manner, by way of supplement as advised. R. 103.

Nov. 22, 1881. Amended and supplemental cross-bill filed by John J. Knox, commissioner, making Bradley and Wilson parties, reciting proceedings relating to appointment of receiver, as to injunction, funds, and draft in the hands of Wilson, received after the 20th April, 1878, that the premises described have been sold, and a deficiency due and unpaid of $11,466.13, and claiming that he is entitled to have rents arising during the litigation paid over to him; prayer for process against Bradley, Wilson, and complainants for payment to him of money in the hands of Wilson and of Receiver. R. 106.

March 15, 1883. Answer of Shepherd *et al.* to amended and supplemental cross-bill, averring that premises were renting at $1,500 per annum, when bought in by the F. S. & T. Co., that $5,900, on account of the purchase, had been paid by Shepherd, and that the repurchase was a satisfaction of the indebtedness; that they are estopped by the terms of the deed and sale, to say that the sale did not satisfy the debt; that under the trust Shepherd is entitled to all rents of the premises up to the sale, and no right was conceded by the consent to a receiver; that the sole purpose of the original bill was an injunction until the decision of the case in the Supreme Court, and that upon such decision and the dissolution of the restraining order the purpose of the bill was fullfilled and thereafter there was no cause pending; that the demurrer was sustained to the cross-bill, and is conclusive against this bill, and they pray the benefit of a demurrer. R. 107.

BRIEF.

The subject-matter of the original bill was the *cloud upon the title*, caused by the pending suit. Its object and scope was to restrain a sale only until the decision of that cause by the Supreme Court.

No other relief was prayed.

No action was taken upon the bill except to obtain the restraining order, which was acquiesced in until the decision of Supreme Court, and when the order of January 17, 1880, was passed, dissolving the restraining order, it disposed of the matter of the original bill and carried with it the cross-bill.

Ross *vs.* Clove, 3 Dana, 189, 197.
Cross *vs.* De Valle, 1 Wall., 14.

No process was issued on the cross-bill until February

26, 1881. It was a nullity and should have been stricken from the files.

Washington R. R. *vs.* Bradleys, 10 Wall., 299.
Miles *vs.* Bacon, 4 J. J. Mar., 457.
Anderson *vs.* Ward, 6 T. B. Mon., 419.

The cross-bill relates to entirely different subject-matter, and the demurrer to it was properly sustained.

Railway Co. *vs.* U. S., 101 U. S., 641.
Rubber Co. *vs.* Goodyear, 9 Wall., 809.
Story's Eq. Pl., sec. 398, b. 399, 629.

New parties by cross-bill cannot be made.

Shields *vs.* Barrow, 17 How., 142.
Cross *vs.* De Valle, 1 Wall., 5.
Griffith *vs.* Merritt, 19 N. Y., 529.
Andrews *vs.* Kibbee, 12 Mich., 94.
Slason *vs.* Wright, 14 Vt., 208.
Rutland *vs.* Paige, 24 *Id.*, 181.

A. Cross-bill which seeks no discovery and makes no defense not equally available by the way of answer to the original bill will be dismissed.

Glenn *vs.* Clark, 53 Md., 580.

B. Cross-bill asking for relief not germane to the subject-matter of the original bill will be dismissed.

Lund et al. *vs.* Skanes Enskelda Bank, 96 Ill., 181.

Where plaintiff in ejectment who has recovered judgment for possession and mesne profits files a bill to remove a cloud upon his title the defendant cannot by cross-bill set up a claim for improvements made by him upon the land in question.

Moody *vs.* Harper, 38 Miss., 599.

The original cross-bill prays no relief except injunction

and receiver, and in cases of mortgages a receiver will not be appointed except upon bill to foreclose. The appointment is merely auxiliary to the principal relief sought by the action.

High on Recvs., secs. 6, 83, 639.
Jones on Mort., secs. 1516, 1526.

There was no default in the payment of the notes when the receiver was appointed, and if there had been the deed provides that the grantor shall receive the rents.

Unlike an ordinary mortgagee, the party secured by deed of trust has no interest in the land.

Neilson *vs.* Lagow, 12 How., 98.

The rents were not granted, the grantor is entitled to them until sale made, and Shepherd and his trustees are entitled to the whole amount.

Chadbourne *vs.* Henderson, 1 Jere Baxter, 463.
Merford *vs.* Hamner, 3 *Id.*, 391.
Wagar *vs.* Stone, 36 Mich., 364.
Guy *vs.* Ide, 6 Cal., 99.
Gilman *vs.* Ills. and Miss. Tel. Co., 91 U. S., 617.
R. R. Co. *vs.* Schutte, 103 U. S., 143.
Teal *vs.* Walker, 111 U. S., 242.

The claim of the Freedman's Saving and Trust Company is not only for the rents collected by the receiver, amounting to $787.50, but also to the money and draft in the hands of Wilson, received by him from the United States for rent of this property, which the court refused to require him to pay over to the receiver. Rec. 26.

The decree in this cause is simply for the amount in the hands of the receiver, $787.50, which is awarded to Shepherd. We submit that the amount is below the jurisdiction of the court, and the appeal of the Freedman's Savings and Trust Company herein should be dismissed.

The order of court consolidating the two causes (Rec. 139)

is expressly without prejudice to the rights of any of the parties in either of said causes.

The decree (R. 151) is distinct in each cause.

CAUSE B.

Assignment of Errors.

The court below erred in decreeing that the complainant, John W. Thompson, was entitled to the money and drafts in the hands of Wilson.

It also erred in not awarding said money and drafts to Shepherd or his assignees.

John W. Thompson intervened in Cause A, claiming the funds in the hands of Nathaniel Wilson, but subsequently obtained leave to withdraw, and he filed the bill in Cause B, in which he alleges that he holds two notes of Shepherd secured by deed of trust, the amount of which unpaid is $11,677 28, and that the security having been diminished, Shepherd on June 21, 1877, by an instrument of that date, covenanted that the proceeds of a certain claim against the United States for rent of 915 E street, in the name of Bradley, use of Shepherd, use of Taylor, Cross, and Bacon, trusteees, should be applied to the pay ment of that indebtedness; that said trustees concurred therein; that a claim for $4,200 was then pending; that subsequently a claim for rent at the same rate for the fiscal years 1877 and 1878 was filed, the first suit resulted in a judgment for $1,800 and the second was withdrawn, and drafts for all three years had passed into the hands of Wilson; that the first draft for $1,800 had been duly indorsed, but Wilson was prevented from paying over the money to Thompson by the injunction in No. 5,723; that the other draft is held by him, but the payees refuse to indorse; that the F. S. & T. Co. claim to be entitled to receive this fund; that Shepherd is insolvent and out of the country.

That he holds a judgment for $4,000 against Shepherd,

No. 20,935 at law, upon which execution has been issued and returned *nulla bona*, as appears by a short copy (not filed), made part of bill; that he also caused an attachment, by way of further execution, to be issued and laid in the hands of Wilson, who had answered, setting forth the facts stated, and no further proceedings had been had, and the judgment is wholly unsatisfied. Submits that if he is not entitled to the fund because of the assignment that he is entitled to it on account of the judgment and attachment.

That Bradley has a power of attorney, he is informed and believes, to indorse the draft for Shepherd.

Prays for injunction that Wilson be ordered to pay money over; that payees be required to indorse the other draft so that Wilson may collect and pay over the amount.

The answer of Shepherd avers that at June 21, 1877, there was no claim and demand as described in the assignment except the then pending claim; that the rent for 1877 and 1878 had not accrued; that under Shepherd's deed to his trustees (Nov. 15, 1876) all rents that accrued were payable to him and not to his trustees, and the affect of the assignment is a question of law to be determined by the instrument.

That the indorsement of the $1,800 draft was conditional, and that Thompson had never performed that condition.

That the assignment is null and void.

That the alleged testimony of Shepherd in another cause is immaterial and inadmissible.

That no *fi. fa.* had been issued upon the $4,000 judgment and no lien had been acquired by the attachment, which cannot be made the foundation for any relief in this cause.

That the bill is multifarious.

That Thompson's claim is barred by limitations.

BRIEF.

The Thompson bill is inconsistent One aspect of it claims the fund as his, by virtue of the assignment, to be applied upon the unpaid deed of trust notes. Another aspect of it claims the fund as Shepherd's, to be reached by so much of the bill as is a judgment creditor's bill, for the satisfaction of the judgment. Such a bill cannot be sustained.

Shield *vs.* Barrow, 17 How., 142.
Lloyd *vs.* Brewster, 4 Paige, 537.
7 Md., 268, Lanahan *vs.* Latrobe.
107 U. S., 484, Williams *vs.* Jackson.

Regarding solely the judgment creditor's branch of the bill, it is beyond dispute that no *fi. fa.* has ever been issued upon the judgment or returned *nulla bona*, and this is indispensable to the right to file such a bill.

Jones *vs.* Green, 1 Wall., 330.

So far as the bill is based upon the attachment it must fail, because nothing was seized by or taken into the custody of the marshal, no lien was obtained by the proceedings, and there is nothing to which the aid of a court of equity can be applied.

Drake, sec. 225.
Ib., sec. 454 equity will not interfere; remedy is against the garnishee.
Bigelow *vs.* Andress; 31 Ill., 330.

As to the other branch of the bill, Thompson is not a judgment creditor. He claims to enforce the assignment in a court of equity for the satisfaction *protanto* of his simple contract claims. The assignment (R., p. 20) of June 21, 1877, is void under the law and cannot be enforced.

Spofford *vs.* Kirk, 97 U. S., 382.
Goodman *vs.* Niblack, 102 U. S., 556.
St. Paul R. R. *vs.* U. S., 112 U. S., 733.

It is submitted that the bill is multifarious, and that the claim under the assignment is barred by limitations, which is three years in this District.

This is the same assignment which this court held in Shepherd *vs.* Thompson, 122 U. S., 231, not to be evidence to take these same notes out of the statute of limitations. The fund should be decreed to Shepherd for use under the terms of his deed of trust.

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